

Q. For a number of years?

A. Yes, sir; several years; I don't remember how many; I never noticed particularly, but several years, but kept filling.

525 Q. How long did the water between it and Stockley's field, on Centennial Island continue?

A. Stockley's field on Centennial Island?

Q. Yes, sir; Stockley's field on Centennial Island and that towhead?

A. Stockley's field on Centennial Island?

Q. Yes, sir; this present piece of the old Trigg tract that was left out of the cut-off, and the towhead, as it formed, how long did the body of water between those two pieces continue to be?

A. It has always continued.

Q. Is there any water between those two places now?

A. I think there is; I don't know; I believe there is between there and the island.

Q. Didn't you cross over that old river this — in the wagon?

A. Yes, sir.

Q. Was there any bridge there?

A. No, sir.

Q. You crossed over dry shod, did you?

A. Yes, sir; I crossed over a lot of laid down poles on the ground.

Q. Then there is no water at the present time at that place in that old river?

A. Old river around here?

Q. Yes, sir.

A. I think there is some in it.

526 Q. Is that running water, or is it just a pond?

A. It is standing water, I think, sir; about in ponds; I never noticed it particularly.

Q. State whether or not the old river bed between Island Thirty-seven and Dean's Island has filled up since the cut-off?

A. Nearly all of it.

Q. Hasn't that old bed now grown over with timber and small trees?

A. Yes, sir; if there had been none of it cut off there would have been trees there; some of the oldest would have been saw logs there now.

Q. Is there anything to distinguish that towhead at the present time from Dean's Island, and the made land north of it; that is, any land that is marked, any sand bar, pools of water, or anything of that sort?

A. Well, there is land over there with timber on it. You mean this towhead over there?

Q. Yes, sir.

A. Yes, sir; that has always been open; they never have joined.

Q. The towhead?

A. And the little island.

Q. The towhead and the made land?

A. Yes, sir; the towhead island has never joined Dean's Island. This little island up here has never joined Dean's Island. That

527 chute through there is still there, but it is built up higher than it was; it has filled up.

Q. Are there any ponds in that chute?

A. I haven't been through it in a long while; I don't know whether there are or not.

Q. Could you see it as you came along the road this morning from Thirty-seven?

A. No, sir; I didn't come far enough. That is not far from here; that is too far south; I didn't come in a mile or so of it.

Q. I will ask you at the time the cut-off was made, whether or not it caved so rapidly that you could see the land going into the water at the moment the cut-off was being made?

A. Yes, sir; we could see it.

Q. Did large or small chunks of land go in at one time?

A. Sometimes two or three acres would go in.

Q. Did it make any noise?

A. Yes, sir.

Q. You could both see it and hear it, then?

A. Yes, sir; could both see and hear it. It liked to have caught me walking along on the bank; it came mighty near it. It went in very fast on this side, on the island side—the Trigg land.

Q. The Trigg land caved in very rapidly at that time?

A. Yes, sir; it caved very rapidly, and caved down and caved off a part of Mrs. Stockley's land; this tract right here.

Q. That old river as you have stated, that ran between the Trigg place and Island Thirty-seven on one side, and Dean's Island 528 and Arkansas on the other, was the boundary of the State of Tennessee, wasn't it?

A. Yes, sir; that was as far as Tennessee came, and there is where it belongs yet. It never has crossed there. That is as far as Arkansas comes. North of that chute over there is as far as Arkansas comes, or has ever come this way, I have been here ever since before the war.

Q. Supposing the old state boundary line to have been in the middle of the river, where it was when you first came down here; was the towhead, at the time you first saw it, on the Tennessee side or the Arkansas side?

A. It was on the Tennessee side, south of Arkansas. Tennessee never did join it.

Q. Never did join Arkansas?

A. Never did join Arkansas. That little island over there is as far as Tennessee ever went. They call it Tennessee; I don't know whether it is in Tennessee or where it is. It is between the main shore and Arkansas, I know, Dean's Island.

Q. Was it east and south, or on the Tennessee side of the middle of the river, as the river was when you first saw it?

A. Yes, sir; it is south and east of it; south of Dean's Island, I think.

Q. From what you know of the country at that time, and the location of the lines of the old Trigg place, I will ask you to state whether

529 or not, in your opinion, the piece of land that Mr. Stockley has under fence on the towhead, of which we have spoken, is within the lines of the old Trigg tract?

A. I think that is on the old Trigg tract. I can tell you exactly from the other side over yonder where I showed them that corner, because that land right across run to the south boundary of the Trigg line, or the Trigg land. It is on the Trigg land, I think. Well, I know; well, because I was right close to it for years.

Q. How much of the old Trigg tract was in cultivation at the time you first got acquainted with it, about how much?

A. I can't tell you, I don't know how much there was; a thousand or twelve or thirteen hundred acres; something like that at the time I first knew it.

Q. I will ask you whether or not, after the cut-off there was an island left out of the old Devil's Elbow, and what this island is called? I am talking about the spot of land we are on now; did the cut-off make Centennial Island?

A. Yes, sir.

Q. I will ask you whether or not this Centennial Island is now recognized as a part of Tennessee?

A. Yes, sir.

Q. In what direction is Tennessee from here, the main shore of Tennessee?

A. Right south.

Q. Isn't it also due east of here?
530 A. South and east, yes sir.

Q. I will ask you whether or not this towhead is on a line running east from this spot on which we are now sitting towards the Tennessee shore?

A. It is towards the Tennessee shore, on the Tennessee side.

Q. In other words, it is nearer the Tennessee side, isn't it?

A. Yes, sir.

Q. I will ask you to state in what direction Island Thirty-seven is from here?

A. North.

Q. Is that towards Arkansas or Tennessee?

A. Towards Arkansas.

Q. Is that part of the State of Tennessee now?

A. Yes, sir.

Q. In what state do you vote and pay your taxes now?

A. Tennessee.

Q. Did you ever live on the old Trigg place?

A. I lived right adjoining to it. It lay between us. I lived in Tennessee then.

Q. You voted then and paid your taxes in Tennessee?

A. Yes, sir; I lived on the main county road from Covington, down into Devil's Elbow.

531 Cross-examined by Mr. Norton, for plaintiff:

Q. How long ago did you say you first became acquainted with this country?

A. About 1861 or 1862; I have been here ever since.

Q. You say then the Dean's Island place was a small place?

A. Yes, sir.

Q. And the island, itself, was small as compared with its later size?

A. Yes, sir; the island was a great deal smaller than it is now. The island made south down to that towhead there and never has made any further. It was a very small place when I first knew it; I was over there every week.

Q. But it gradually, from the time you first knew it, made south to the towhead?

A. Yes, sir; down to the towhead.

Q. Then it was gradually making south towards the towhead from 1862 on?

A. Yes, sir. It was a good long ways through to that towhead where it stopped at. That has made up down a great deal, and keeps building up higher, and does yet at every overflow, and fills up at places.

Q. Well, had the island made up as far as the towhead when the cut-off was made when all that Trigg land went into the river?

A. No, sir; it hadn't made that far then. The river run around there then. The river was on Dean's Island at that time.

532 Q. You mean the river was on what since has become attached to Dean's Island?

A. Yes, sir; on part of it.

Q. At the time of that cut-off in 1876, how much would you say Dean's Island had broadened toward the south from what it was when you first knew it?

A. Well, I couldn't tell you; a right smart though; Dean's Island is pretty long north and south now. It is a big island now to what it was when I first knew it in 1862. It was very small then.

Q. As the original Dean's Island broadened toward the south was the clearing on it and the fields extended towards the south also?

A. The fence was built the last time Davy Wright—he married a Dean; his fence was built right out on the edge of the bar a long ways up towards the head of the island, up towards Pecan Point; somewhere in 1862 or 1863.

Q. Well, as the island extended south, was the clearing extended south, too—the fields?

A. The bar extended south; that made south; and made a little west. It began on Dean's chute and made southwest, and might have made a little east probably.

Q. When you first knew it, about how much cleared land was there on the Dean's Island place?

A. I think there were fifty or sixty acres; I can't tell you, but I don't think there was over 50 or 60 acres. Four or five families lived on it, and they all lived right in a huddle.

533 Q. How much of it is now cleared?

A. I can't tell you. Dean's Island has made terribly since then, but it has made more west, down towards Thirty-seven. There is a big make there. From this main side here to Dean's Island was called two miles. It was a mighty wide river there; from the place up here called the Smith place, it was very wide there.

Q. Dean's Island now is a farm of several hundred acres, isn't it, open?

A. I don't know, indeed. I haven't been there in several years. They say they have got a good big farm over there.

Q. Have you not been there in several years?

A. No, sir; I haven't been there in several years.

Q. You have not been on the towhead in several years?

A. I have come through the towhead.

Q. How many years would you say since you had been on Dean's Island?

A. I have been there nearly every year; pretty near every year.

Q. On Dean's Island?

A. Yes, sir; on Dean's Island. Let's see, I wasn't there this year, I don't think, but I have been there nearly every year on Dean's Island.

Q. Where was it you meant, then, that you hadn't been for several years?

A. Across over yonder where they have cleared; I am on Dean's Island, but not where the clearing is.

534 Q. You mean you have not been about the open plantation for several years?

A. No, sir; I have not been on there for several years. I know the last time I was along there though, whether the last year or the year before that, they had cleared down all the old bottom land, and had got in the island west, into the higher land. I never noticed particularly, but it looked like a pretty big farm opened in there from where Capt. Andrews used to have it.

Q. You have stated now about what was the size of Dean's Island in the way of clearing in 1862; now can you tell me about what was on Dean's Island in the way of a farm in 1876, when the cut-off was made; how much farm did they have then?

A. I don't think they had much more; I don't remember though. I don't know whether I was over there about that time or not, because there was a good many years—I know Andrews cleared up the land there, most of it; Capt. Andrews begun right above this tow-head chute. He had a boat yard there, building steamboats. I was over there often then, but I don't think they had cleared much, unless it was right along on the bank, and that caved off, the most of it; it caved terribly on the east side.

Q. Dean's Island caves, then, on the east side?

A. It caved then, I don't know whether it does now or not. I know Horace Andrews was up there, and he had to move back all the time.

Q. You have testified about giving some surveyor a starting point; that starting point wasn't on Dean's Island, was it?

535 A. I don't know, sir; I don't recollect.

Mr. McSpadden: He means to Maj. Humphreys the other day?

A. Oh yes. Well, that is over on the main shore.

Q. You mean that is the other side of the main Mississippi river as it runs today?

A. Yes, sir.

Q. On the other side of the river from where we are now?

A. Yes, sir; and always was east of the river, since I have known the country, southeast from the river.

Q. In connection with that survey, did you mean me to understand that you were also upon the towhead island?

A. Over on that side?

Q. Yes.

A. No, sir; I wasn't over there. I went over home across it; but I never went back over there. The surveyor came over on this side. He took his bearings and had a flag up on this side, and came over. I don't know what he done on the towhead island there; I suppose he was running out Walker's line.

Q. You were on the towhead island though that day; went across it?

A. Oh, yes, sir; I went across that morning.

Q. Was that the first time you had been there in a good while?

A. Well, every year I am across there; I go across it, this west part of it; the east part I don't.

Q. You testified you crossed old river this morning in a wagon?

536 A. Yes, sir.

Q. How far from the head of old river chute, from where we are at present, how far is it up there?

A. I don't know, two or three miles, I suppose.

Q. In that old river bed there is yet water at a great many places, isn't there?

A. Yes, sir. When I first knew Thirty-seven and the river, the river was up here close to that church yonder. Here years ago that road was a levee, this road up here this side of the church, what they call a road there was a levee. The river came along and notched in here so it came close to the corners.

Q. How far is it from where we are now to where you say the river used to be up yonder at the church?

A. I don't know, sir, exactly how far. The church is right yonder; it is three or four hundred yards.

Q. That is where the river ran at the time of the cut-off wasn't it?

A. Yes, sir; in 1876. That is the time it came right down this here chute here.

Q. You say it is three or four hundred yards to the church?

A. You can see the church through there; yonder it is on the right hand side up yonder; I judge it to be three or four hundred yards.

Q. How far is that church now from old river, as we call it now?

A. Oh, it is five or six miles. Old river now is by Shawnee Village.

Q. Well, you misunderstood me. You say the river chute ran right there.

A. Yes, sir; when I first knew it.

Q. By the church?

A. In 1862 along there.

Q. And it did run there when the cut-off was made in 1876?

A. No, sir; it didn't run there then. It was a mile nearly of that; it kept making; it kept going west, that way, towards Shawnee Village, Arkansas, and the bend caved very rapidly. I recollect it well.

Q. Now, where you crossed this morning I believe you said was two or three miles from here?

A. Yes, sir.

Q. Where you cross—the old river this morning there was a road?

A. Yes, sir.

Q. Well, the water gets in the old river there until you can't cross it, don't it?

A. Yes, sir.

Q. And little boats ran up there?

A. Yes, sir.

Q. And do do it?

A. Yes, sir.

Q. They do it without river being up very high, don't they?

A. No, sir; I think the river has got to be up right smart.

Q. Well, it need not be an overflow?

538 A. No, sir; not an overflow, but something like the bank full.

Q. There is nothing in the way of riding on dry land from where you crossed it up to the original Dean's Island place, is there?

A. No, sir; I reckon not. Well, right above where I crossed it there is a very low place there; I don't know whether you can, but I suppose you can ride across it.

Q. Is the water in the old river bed on both sides of where you crossed it this morning?

A. Only in places—sort of ponds.

Q. Up here near Mr. Stockley's residence it is quite deep yet, isn't it?

A. I don't know, sir; I don't think it is. If it is it is mighty narrow.

Q. Did you go along the bank of old river after you crossed it?

A. No, sir; I came this road, right straight.

Q. You got off at the bank?

A. Yes, sir. The bank goes right around there by Walker's house, the old bank. In old river up here there are some deep holes around Walker's house.

Q. When you went across the towhead island, were you on the Dean's Island side of the towhead chute also?

A. Not far.

Q. Well, you were on there, were you?

A. Yes, sir.

Q. Were you horseback or afoot?

A. Horseback.

539 Q. You rode straight across from Dean's Island on to the towhead island, didn't you?

A. Which? This towhead island here?

Q. Yes.

A. Yes, sir; rode through the sand here.

Q. In testifying some minutes ago you said the towhead had never joined on to Dean's Island?

A. Well, the towhead hasn't. The water runs through there. This is the bottom of it I crossed on. It has never joined. It has never made up level. This towhead over here, the water runs through there.

Q. It has to be quite high to do it, don't it? There is no water in there now, is there?

A. I think there is some right above the old bed.

Q. Do you know what has been called Dean's Island chute?

A. Yes, sir.

Q. How much of that now, that strip that you know as the towhead chute, is there that you couldn't ride across during the most of the year?

A. You can ride across all of it except away up adjoining the Smith place. There is something singular about that; several years ago it throwed up like a road, just about wide enough for a wagon to pass, like a man had put up a high levee. It is right there now; you can see it. It has just throwed up a level place for two or three miles long, right north and south, about the width of so two wagons can pass each other.

540 Q. It is sand, is it?

A. Yes, sir; it has made a perfect road. I saw it shortly after it was done; I was along there.

Q. Right up and down Dean's Island chute?

A. Yes, sir.

Q. I mean towhead chute.

A. No, not up and down towhead chute, from the foot of towhead chute down north to Island Thirty-seven; right north it has throwed up and made a perfect road just about wide enough for two wagons to pass.

Q. But that don't touch the land we are talking about?

A. No, sir.

Q. I was inquiring about the towhead chute?

A. Oh, yes. This towhead chute over here?

Q. Yes, the chute between what you call towhead island and what you call Dean's Island?

A. Oh, yes, sir.

Q. Now, then, is there any place in that chute as it used to be—I don't know how much chute is left there now, but if there is any place in there how much place is there that you can't ride across any time in the summer, off of Dean's Island onto what you call towhead island?

A. There are a good many places that you can't ride across.

Q. What are they? Ponds?

541 A. Yes, sir; small ponds, and a few of them are in sight from this side, but the sand is so soft and so much water, you can't ride it at all.

Q. Dry sand?

A. Yes, sir; I rode across when the surveyor was up here surveying that land; you can hardly get across the soft sand. I don't know how it is on the east end.

Q. Is there any sort of growth of young willows, or cottonwoods, or sprouts coming up in that soft sand?

A. Yes, sir; I noticed some sprouts scattered, and it looked like some way up east.

Q. Can you look up and down towhead chute?

A. Oh, yes sir; you can look up and down it and see most anything up and down it yet.

Q. But it is growing up in an undergrowth of cottonwood from each side, is it?

A. Yes, sir; I saw a few cottonwood switches up on this end of it, some up as high as my head; I don't know how it is further east.

Q. Do you know where Mr. Stockley's field is over there on towhead island?

A. Yes, sir.

Q. Do you know where there is another field on towhead island?

542 A. Well, up there where the island first commenced making there was somebody came there once; I don't know whether the field is there yet or not.

Q. How far is that from Mr. Stockley's field?

A. A mile or so, I reckon.

Q. What direction from Mr. Stockley's field?

A. It is a little northeast.

Q. A little north of east?

A. Yes, sir; a little north of east.

Q. About a mile?

A. I suppose so.

Q. Do you know how much clearing is there?

A. No, sir; I don't. When I saw it I was there once when the man first settled there and built a house. It was a very small place then.

Q. How long ago was that?

A. Let's see, when was that? Somewhere in the seventies, I believe, or the first of the eighties, some where in the seventies, I believe. It has been a good while ago. It may have been in the eighties, by George. The last of the eighties, I don't recollect, I have forgotten who he was. It was an old man.

Q. In your judgment, how many years ago was that when he first went in there?

A. It seems to me like it was seventy-seven or eighty-eight some where in there.

Q. Do you mean 1887 or 1888?

A. No, '77 or '88, some time in that period.

Q. May be you could come nearer if you would say about how many years ago you think it was?

543 A. I would have to study. I think it was in the seventies, I am not positive.

Q. The towhead didn't appear until several years after the cut-off, did it?

A. No, sir; there was no towhead there.

Q. For several years after the cut-off?

A. No, sir.

Q. Well, the cut-off was in 1876?

A. That has been thirty-four years ago; well, it was several years after that. The cut was made the 7th of March about sun up.

Q. Now, that field you say that man commened on, that, you think, was in the seventies, and you haven't been there since?

A. No, sir; I never have been there since. It seems to me it was about 1884, since I come to think about it.

Q. That would be only eight years after the cut-off?

A. Well, it seems to me like it was 1884. It was a very small place. There was not but a few acres of it, and he built a house on it, but he left there, whoever it was, and then Andrews, after that, put a family there. The island got a little bigger and he put a family over there.

Q. Who owned Dean's Island at the time?

A. He did, and he was building boats right over on the southeast corner of Dean's Island, next to that chute.

Q. Building boats?

A. Yes, sir; steamboats. He had a dock yard or something of the sort, and built some boats there, and had a good man-
544 men there at work. That is right in the northeast corner of Dean's Island. Dean's Island then, though, was making east, that opposite, I don't know how it is now. Well, I was along there I believe it was the first of this year, and I see it is caving mightily on the head of Dean's Island.

Q. On the east?

A. Yes, sir, on the east side, right along from Mrs. McGavock's.

Q. Dean's Island has gradually made towards the south, hasn't it?

A. Yes, sir. Well, I think down towards the lower part of it, it is making east, too, isn't it?

Q. Well, the towhead, after it sprung up, it made towards the south, too, didn't it?

A. Yes, sir; the towhead island made south, and I believe it is making east.

Q. And then later it also became attached to Dean's Island, so you could ride across from one end to the other?

A. Well, you could always ride across when the water was down.

Q. You could?

A. Yes, sir. It used to be very deep. There was not many places you could cross, you would mire up.

Q. But from any early time in the history of the towhead you could ride across from it to Dean's Island?

A. Yes, sir; from away late in the fall.

Q. And the longer it stands there the less water goes through that towhead chute?

545 A. I suppose so.

Q. I mean the bottom gets higher and sand fills in there?

A. Yes, sir; the sand is higher; I noticed on the foot here it is higher than it was.

Q. And the cottonwood sprouts encroach on the sand in there?

A. There are a few cottonwood sprouts in there, some of them are up and sprinkled around as high as my head. I noticed that some time ago. I don't know how it is up on the other end. I just came across the foot of it. You can see through them. There is nothing there to interfere with anything; just a few sprouts.

Q. From Mr. Stockley's present field on the towhead chute how far can you ride toward the south?

A. You can't ride far, not on the lower end.

Q. Before you come to the sand of the river?

A. Yes, sir; on this end you can't ride far, on the southwest corner. On the northeast corner it is a good long ways to the water's edge. But there is no trouble to ride from that towhead field of Mr. Stockley's up on to Dean's Island, clear to the head of the original Dean's Island.

—. —.
A. I don't know how far it is up above. Right across the lower end there is no trouble, except the sand is mighty loose; your horse will go down nearly to his belly in the sand.

Q. That sand doesn't lack a great deal of being as high as the ground on each side, does it?

546 A. Yes, sir; it lacks five or six feet. I will tell you what that does sometimes, though; that washes out sometimes. I was just thinking when I came across there when the next overflow comes whether this will wash out or put more on it. If it puts more on it will close it up. I have known it to wash it out clean, pretty deep from away up. I never went clear through it, but this end has a tendency to wash on the right, coming through it north. It seems that the water draws that way. It doesn't come this way. It will run out here and go yon-way. I noticed that since the water. It has a tendency to wash off the northwest corner of the chute. Low water will put it pretty full, like it is, but a big overflow will wash it out at the foot here. I don't think it does, though, at the head, but I am not certain.

Q. Well, of course, you can't tell what any overflow will do very well?

A. No, sir; you can't tell. I have known it to wash out places, and then go and make it up higher than it was at first with sand.

Q. About what is the present stage of the river, do you have any idea?

A. No, sir; I don't; about twenty feet, I suppose, to the water from the top of the bank.

Q. Mr. Massey, when the cut-off of 1876 put all of that Trigg land in the river you have testified about, did it leave any of it on the east

side of the cut-off as it was made? Was any of the Trigg land left on the other side?

547 A. No, sir. On the east end? East side?

Q. Yes; was any of the Trigg tract left on the other side of the present river, or on the other side of the river the way it stood then?

A. No, sir; it never cut through it.

Q. There was nothing left over there, then, on the Trigg land?

A. I don't think there was, nor south either, because there was a Carr tract of land, and then my land, and it took most of the land that was left.

Q. All of the Trigg land that was left, then, in 1876, was the land we are now on, and known as Corona?

A. Yes, sir; it caved on the east side there right smart after the cut-off, but I think it has quit now.

Q. Well, this towhead land is now, then, where the Trigg land first was?

A. Yes, sir; part of it.

Q. And where the river later was?

A. Yes, sir.

Q. And then it commenced to build up?

A. Yes, sir; the Trigg land run up, I couldn't tell you how far. I could tell you from the other side of the river. The Trigg land run up, I think, about to where Walker's line crossed.

Redirect examination by Mr. MeSpadden, for defendants:

548 Q. In your cross-examination you have spoken of the Smith place; I will ask you if that is not the Island Thirty-seven?

A. Yes, sir.

Q. In your cross examination you have spoken of the church, and stated that the river ran along there, and pointed out a window here to it; I will ask you if that is north of here.

A. It is a little north of this house.

Q. The river that you spoke of then wasn't that the river between Trigg and Thirty-seven?

A. Yes, sir; that was the chute of Thirty-seven.

Q. It was not the main river?

A. No, sir; the main river run around east of the tract and the Smith place, too.

Q. So from this spot on which we now are, about how far was it east of here to the main river when you first came here?

A. East of here?

Q. Yes, sir; just roughly; right straight out that window?

A. Let's see. Well, it was near a mile; about a mile, something like that.

Q. You have spoken of what we call the towhead chute; that is the chute that bounds this towhead on the north, and is between it and Dean's Island and the made land over there on one side?

A. Yes, sir.

Q. I will ask you if it isn't a fact that the high water comes through there?

A. Comes through the chute?

Q. Yes.

549 A. Yes, sir.

Q. Isn't that about as navigable in high water times as the old river between Stockley's and the towhead?

A. After the cut-off made, that was the main channel. The boats all came up the point there, and took right down this old river, and then took through that chute. That was the main way the boats run.

Q. After the cut-off for a while?

A. For several years.

Q. They ran through what we call the towhead chute?

A. Yes, sir; it was a good deal nearer than to take that yonder way. They could come across here and it wasn't but two or three miles, and around the other way it was fifteen miles. They did it invariably, all boats.

Q. They ran between Dean's Island and the towhead?

A. Yes, sir.

Q. That was after the cut-off?

A. Yes, sir; that is the way they ran.

Q. I will ask you if it isn't a fact that a great many people on Island Thirty-seven do all their shipping from this, Corona, landing, and gin a great deal of cotton at Mr. Stockley's gin, here at Corona Landing?

A. Yes, sir.

Q. Is it not a fact that for at least eight months in the year they haul dry shod across this old river between here and Thirty-550 seven?

A. Yes, sir.

Q. Which is the same old river between here and the towhead?

A. Yes, sir, it keeps filling up. That is all filling up.

Q. Corona Landing, then, is the principal landing for Thirty-seven, isn't it?

A. Yes, sir; it is the main landing for Thirty-seven.

Q. I will ask you whether or not the towhead chute, between towhead and Dean's Island, isn't navigable for small boats in high water, at the present time?

A. It will do for any boat. The further up you go the deeper it is, the further east you go.

Q. About how many months in the year does the water go around in this old river, around between here and Thirty-seven?

A. I can't tell you sir; sometimes it don't go around at all and sometimes it is a good long while.

Q. It depends on the stage of the water?

A. Yes, sir; on the water entirely.

Q. You have lived around the bank of the Mississippi River here a long while?

A. Yes, sir.

Q. About how long does the high water last?

A. Generally lasts five or six weeks.

Q. I will ask you this; isn't it a matter of common knowledge that the river banks cave principally and almost only in times of high water?

551 A. Some cave worse when the water is down. For instance, this bank out here will cave worse when the water is down than it did before.

Q. This bank in front of Corona?

A. Yes, sir; and west of here. After the water is gone it commences caving and when it is on the rise; but when it is up, bank full, it caves, but not near as much.

Q. Isn't this bank here at Corona an unusually high one?

A. Yes, sir; this is a high bank here.

Q. I will ask you to state whether or not, before this levee was built in Arkansas, did this land here overflow?

A. I don't think it did; I think Mr. Stockley's place here never did overflow, nor the Trigg part, up that way, either.

Recross-examined by Mr. Norton, for plaintiff:

Q. Does what you call the towhead island go under in high water?

A. I don't think all that goes under; I know after it first made, I went across there, and I got stuck on top of it in a skiff with some colored fellows. I went up pretty high; I thought I would go up high and wait and I could drop across easier—the wind was blowing so—and it would not be like pulling straight across, when the wind was blowing, and I got stuck on it. I think the further east you go the higher it gets. It was very narrow when I crossed it.

552 Q. Isn't the highest part of it where the towhead first appeared?

A. I think so, but I am not sure. That is where I got stuck, anyhow, up near the head of it; I had gone up there; it was nearly night and the wind was blowing, and to pull right square across the river to my house I would be sure to drop below it; I had five or six colored people coming from my place below here; and I waited there until nearly dark, and I got stuck on it. I think it is higher east than on this end, the towhead, judging from that, I have never been there since.

Q. Where do the little boats go to when they come into what we called river here by Mr. Stockley's?

A. They go around by Shawnee Village, and then to different landings along on the place, but Shawnee Village is the main place.

Q. How far is that from Mr. Stockley's?

A. It is about five miles by land, and when they go from there either out through Dean's Chute, or come and go out through that chute there, or come out here.

Q. You say you have been, about once a year, over on the tow-head?

A. Yes, sir; I think about once a year; sometimes oftener than that.

Q. But that is just to ride across from Dean's Island to the tow-head?

A. Yes, sir; ride across the foot of it here. I didn't go over the island at all.

553 Q. No, you didn't go up and down what they call the towhead chute?

A. No, sir; I haven't been up there for years.

Q. You don't know whether or not, in places, the undergrowth isn't entirely across from Dean's Island to the towhead island?

A. No, sir; let me see. I was up there, I think, about four or five years ago was the last time I was up there; I wasn't across then, but there was some bunches of it about four or five years ago.

Redirect examination.

By Mr. McSpadden:

Q. You have spoken of a field on this towhead, the first field that was cleared there; I will ask you if a man by the name of Seth Woodall didn't occupy that about 1884 or 1885?

A. Yes, sir; Seth Woodall went there. There was a man living there before he was.

Q. But didn't that man go off and Seth occupy that?

A. Yes, sir; Seth Woodall lived there a little while.

Q. He lived there until his wife died, didn't he?

A. No, sir; his wife died last year.

Q. But I mean his first wife; don't you recollect he first married Miss Wright?

A. Yes, sir. I don't recollect whether his wife died there or not, but there was a man living there before Seth Woodall.

Q. Did he own or claim to own the land, if you know?

A. No, sir; nobody claimed it.

554 Q. Isn't it a fact that just anybody who came along settled there on that place and lived there without owning it?

A. Yes, sir; there was several lived there.

Q. Isn't it a fact that last fall some parties lived there who were in no way connected with Mr. Cissna?

A. Yes, sir; Woodall lived there a little last fall. He is not there now, he left. He lived there a while.

And further deponent saith not.

Signature of witness waived by consent.

(Cissna vs. State of Tennessee, pp. 83-106.)

Mr. Fitzhugh introduced as evidence on behalf of the State of Tennessee, the deposition of R. W. Friend, said deposition having been taken in the case of State of Tennessee vs. Muncie Pulp Co., et al., and used as evidence in Cissna vs. State of Tennessee. (See Cissna vs. Tennessee, pp. 503-505.)

The next witness, R. W. FRIEND, duly sworn says:

Q. Where do you live?

A. At Pecan Point.

Q. How long have you lived at Pecan Point?

555 A. Thirty years.

Q. 3. Prior to moving to Pecan Point where did you live?

A. At Thomas' Landing, Tenn.

Q. 4. Thomas' Landing is on the Tennessee side, immediately opposite and south of the original Dean's Island?

A. Yes sir.

Q. 5. How long did you live at Thomas' Landing?

A. Two years.

Q. 6. How long before the Centennial Island cut-off had you been acquainted with the Mississippi River around Dean's Island?

A. About five years.

Q. 7. Prior to the cut-off, was there or not anything between Dean's Island and the Tennessee shore, at Thomas' Landing?

A. There was a big sand bar and a chute—we called it the tow-head—running through the bar and next to the Dean's Island shore.

Q. 8. You speak of a big sand bar. At a medium stage of the river, what was the condition of this sand bar?

A. It all went under water, except in very low water you could see a big bar.

Q. 9. Did you or not, ever see any boats go through the chute between the towhead and the Island proper?

A. Yes, the largest boats went through there in high water, Anchor liners.

Q. 10. The Anchor liners were then the largest steamboats on the river?

A. Yes, sir, about the largest.

556 Cross-examination:

Q. 1. What do you understand by a medium stage of water?

A. I mean about 30 feet on the gauge.

Q. 2. What was the gauge?

A. Memphis gauge; 25 or 30 feet.

Q. 3. Then the bar went under only when the river got to be about 35 or 40 feet on the Memphis gauge?

A. It went under at 25 on the Memphis gauge, as I remember.

Q. 4. That, then, you consider a medium stage of water?

A. Yes, sir.

Q. 5. How low did the river have to be for this bar to be exposed?

A. I could not tell you exactly. I know we could see the bar from outside of the river, the biggest part of the year.

Q. 6. Captain, when that bar was exposed in this way, no boats could go through that chute between the bar and the Island?

A. Small boats could, but not the larger ones.

Q. 7. Could small boats go through there at all stages of low water?

A. No sir.

Q. 8. Captain, were you present in that vicinity when the cut-off of 1876 took place?

A. I was living where I am now, Pecan Point.

Q. 9. After the cut-off took place, for how many years did boats use the channel between Centennial and Dean's Island?

A. I don't remember that they used it — all afterwards. I don't remember that. I don't think they used it but a very short 557 time after the cut-off.

Q. 10. Your memory, however, on that is not certain or perfect?

A. They used it only in high water, and that too for small boats in my recollection. I never went through there any more after the cut-off, on a boat, but went through the cut-off.

Q. 11. You will not state, however, that boats did not go around in there for a good many years?

A. No, sir, I would not, because I don't know.

Q. 12. Do you recollect how wide the river was at low water, between Dean's Island and the Tennessee shore at that part of it known as Centennial Island, just prior to the cut-off?

A. It was pretty narrow, I don't know the width.

Q. 13. About how wide would you say?

A. It is all guess work to guess the width of the Mississippi River, but it was narrow.

Q. 14. Could you say that the river at that point—I mean west shore of Dean's Island—and the east shore of Tennessee, and the east shore of Island 37, was as much as half a mile wide just before the cut-off?

A. Oh, yes, it was that wide.

Q. 15. Was it as much as $\frac{3}{4}$ of a mile wide?

A. If I was going to guess for my life, I would say it was a half mile wide in low water. In high water it was miles.

Q. 16. In high water it went all over that section of Arkansas did it not?

A. It went all over that part of the Island.

558 Q. 17. Did it not go further west than the Island?

A. Yes, it went all over into Arkansas.

Q. 18. Do you know anything about what timber there was growing on Dean's Island, just before the cut-off took place?

A. No, sir, I don't know anything about the timber on Dean's Island. I never went over it and never examined it.

Q. 19. You do, however, know that just before the cut-off, at low water, this sand bar was connected with Dean's Island so that boats could not go through it, even small boats?

A. At low water.

Re-examination:

Q. 1. Then, as I understand you, Mr. Friend, it was only at low water that all of this sand bar appeared?

A. That's right.

Recross-examination:

Q. 1. Captain, do you mean to say that none of the sand bar appeared except at extreme low water?

A. No, sir, I don't mean that. The sand bar slopes from the water back and of course the farther back you go the higher the bar is, and you could see a good deal of that bar at a pretty good stage of water. You could only see it all at a low stage of water.

Q. 9. In other words, you mean to say that the lower the water got, the more of the bar showed up?

A. Yes, sir.

559 Re-examination:

Q. 1. I believe you said that at high stage of water, the Anchor liners could go through the chute?

A. Yes, sir, the largest boats went between the towhead and the main Island shore.

Q. 2. And small boats could go through it, except in low water?

A. Yes, sir.

(Cissna vs. State of Tennessee, pp. 503-505.)

Mr. Fitzhugh introduced as evidence on behalf of the State of Tennessee, the deposition of David Dewalt, which deposition was taken in the case of State of Tennessee vs. Muncie Pulp Co., et al., and used in Cissna vs. State of Tenn. (See Record Cissna vs. Tenn., pp. 524-532.)

The next witness, DAVID DE WALT, testified as follows:

Q. 1. Where do you live?

A. Ripley, Tenn.

Q. 2. How old are you, and how long have you lived in Lauderdale County?

A. I am 59 years old, and I was born in Lauderdale County, and have lived there all my life, and have been there ever since the war.

560 Q. 3. During that time have you lived down in the bottom any time?

A. Yes, sir, I lived in the 10th District of Lauderdale County, about two miles and a half from the Mississippi River bottom.

Q. 4. Have you had any experience in noting the growth, and the sale and handling of cottonwood timber?

A. Yes, sir, I have.

Q. 5. Have you ever had any to grow on your places, that you have personally owned?

A. Yes, sir, I have some cottonwood timber on a place that I own, of 110 acres, in the Tenth District, and in 1879 or 1880, I moved on this 110 acre tract, where I had about 10 or 15 acres in pasture, in a branch bottom, which had a good many cottonwoods on it at that time, and at that time, that is, 1880, there were not any of them over

six inches through. Now, this last spring, I had some of them cut for saw logs, and one of the largest, a 12 foot log, measured about 33 inches. Had 400 feet in the log, as counted at the mill, and the others on down from 20 inches to 25 inches at the top. Some of them would measure 36 inches or over at the stump. Between 36 and forty inches.

Q. 6. When you say that you had these logs cut last spring, you mean the spring of 1904?

A. Yes, sir, I had them cut along in February.

Q. 7. It has been a year ago now?

A. Yes, sir.

Q. 8. I will ask you if you have seen this morning four
561 Exhibits of cuts from cottonwood, in the office of Mr. R. G.
Brown, and at a carpenter's shop on Jefferson Street?

A. Yes, sir, I saw two at the office and two at the carpenter's shop.

Q. 9. Well, was any of the timber which you cut, at the stump, as large as these specimens which he has in his office?

A. Yes, sir, some of them larger.

Q. 10. Several of those specimens have irregular circumferences, going in several contours. What would this indicate to you as to where the cut was taken from on the trees?

A. It would indicate that it was cut near the ground, and to get the proper growth of the tree in the circumference around inside the tree, to get the proper growth of a tree it ought to be cut at the ordinary height above the ground, to get the proper growth of the tree by the marks indicating the age of the tree. The nearer the ground they are, the more irregular they are and sometimes conflict with the other, and run together, and don't show the full circle all the way around, when if it is cut at the proper height from the ground, it will show the age of the tree.

Q. 11. You are referring to the annual rings made on the stump?

A. Yes.

Q. 12. Now in reference to cottonwood, is it a soft or hard wood?

A. Soft wood.

Q. 13. Does it grow fast or slow?

A. It grows very rapidly.

562 Q. 14. As compared with oak and harder wood, how do these rings appear? Are they as distinct upon cottonwood as they are upon trees of harder variety of wood?

A. Soft wood, such as poplar and cottonwood, and other soft timber, is not anything like as reliable in marks of age as hard wood.

Q. 15. In cottonwood and soft trees, of porous growth, and rapid growth do these rings which appear, always represent a year's growth?

A. No, sir, not altogether.

Q. 16. Why is this, if you know?

A. Well, sometimes I think it is from freezes, and from drouth that causes those rings to run together. You may start with a ring that goes around and indicates the age of the trees and that will come back to the same ring.

Q. 17. Would a cottonwood in a year of drouth, or a year in which the growth had been interrupted after it had started, by a freeze, take on a new growth, when a harder wood would not?

A. Yes, I think it would.

Q. 18. These exhibits which appear in evidence in your judgment, did they appear to have grown in a cottonwood thicket or not?

A. No. My opinion is that they grew out near some thicket or on some bar or on some bank the edge of a thicket.

Q. 19. Why do you say this?

A. Because in cutting cottonwood where it grows generally in a cottonwood grove or a cottonwood brake the indications of the 563 growth of the tree is not shown like they are on one that stands out by itself. In cutting cottonwood in a brake, and cutting it at an ordinary height from the ground, these rings are not shown, a great many of them.

Q. 20. You mean the annual rings?

A. Yes, sir.

Q. 21. What about whether the tree grows straight?

A. One growing in a brake grows straighter, is not swelled at the ground, or bulges at the roots, like one standing out by itself.

Q. 22. Were these trees bulged at the roots, the exhibits which have been brought here, and which you saw in Mr. Brown's office?

A. Yes sir.

Q. 23. How old was the cottonwood saplings which were in that field in 1880?

A. They could not have been over a couple of years old. Two or three years old.

Q. 24. Have you had other experience in cottonwood except watching the growth in trees on this little tract which you own?

A. Yes sir, I have handled a good deal of cottonwood. Now at the mouth of Coal Creek stands a nice little body of cottonwood which belongs to Anderson & Tully, and in 1880, there was water over it. Now it has grown up in a cottonwood thicket and some of them are large enough to cut into saw logs. In 1880 we had timber where they are standing now. I mean by timber rafts of logs in the river. In the eddy at the mouth of Coal Creek.

564 Q. 25. You mean since 1880 the water has receded from this place, the land has appeared, and the cottonwood has grown large enough for saw logs?

A. Yes sir.

Q. 26. What size do you mean when you say large enough for saw logs?

A. We generally cut cottonwood from 18 to 30 inches and call it pretty good timber.

Q. 27. Have you been in the cottonwood timber business off and on for a good many years?

A. Yes, sir, I have been handling cottonwood ever since 1880, every year, until this last year, and this year.

Cross-examination.

Q. 1. What is your business?

A. I follow farming, look after the farm. I survey some. I have been looking after a good deal of timber in the Mississippi bottom for a number of years, for Capt. Joe C. Marley.

Q. 3. You state that in 1879 or 1880 you bought a fifteen acre tract of land on a branch bottom, which had some cottonwood on it, and they were six inches through. Did you measure them at that time?

A. I stated in 1880 I had a farm with a branch bottom, which had a lot of cottonwood on it at that time, that were nothing more than saplings.

Q. 3. Please answer my question, which I repeat. Did you measure them?

A. No sir.

Q. 4. This is just an estimate of yours, or recollection, after 565 twenty-five years, is it?

A. There were none of them big enough to make rails out of, or to split open and use for rails.

Q. 5. How many trees out of that bottom did you cut when you cut the timber in 1904?

A. Four or five trees, I believe.

Q. 6. Is that all?

A. Yes, there are several standing there yet.

Q. 7. You never happened to measure these individual trees when they were saplings, did you?

A. No sir.

Q. 8. You say that one of them measured 33 inches?

A. Yes sir.

Q. 9. Was that the butt-cut?

A. Yes sir.

Q. 10. How long was it?

A. Twelve feet long.

Q. 11. How many cuts did you get out of that tree?

A. I think there were about three.

Q. 12. What was the size of the second cut?

A. I don't remember.

Q. 13. What was the size of the third cut?

A. I don't remember.

Q. 14. How is it that you remember the but-cut and don't recollect any of the others?

566 A. It was the largest, and it died and the bark had slipped off of it, and I had it sawed into boxing.

Q. 15. What do the rings that you find in cottonwood indicate?

A. Ordinarily they indicate the year.

Q. 16. You mean the year's growth from each ring?

A. Let me explain. There is a soft ring and a hard one, and that indicates the year's growth. The soft part of it grows through the war- (?) or sap season of the year, and the hard part of it

indicates the winter part. Ordinarily that is the rule of counting the growth of a tree.

Q. 17. I show you here Exhibit 2 to the deposition of W. H. Moody, and this has been testified to by Mr. Moody, as being a section of a cottonwood sapling. You will notice where the figure one appears that there is a brownish mark in the center of that section?

A. That is the heart of the tree.

Q. 18. Now on each side of that section, marked with the figure 1, appears a thin brown line running with the grain of the wood. What is that?

A. That is an indication of the winter growth of the tree, or the end of the year, on it.

Q. 19. I was just about to ask you if there was such a thing known as the winter growth of a tree. Is it not a fact that trees cease entirely to grow in the winter time?

A. Every winter, at the end of the year, or at the end of the winter season, one of these thin brown marks, as you call 567 them, will be on the outside of the tree.

Q. 20. In other words, that is a stain or mark left by the bark on the outside of the year's growth, is it not?

A. Yes sir.

Q. 21. Then there is no such thing as a winter growth of a tree?

A. It is indicated as being a winter growth and a spring growth of a tree. That is, the soldt (soft) part looks as if it grew in the summer and the hard part come on through the winter season, and it takes both of these streaks in the growth of the tree to make a year. That is, the soft and the hard.

Q. 22. Is it not a fact that if you find in a tree twenty of those brown lines, such as I show you in the section of Exhibit No. 3, to Mr. Moody's deposition, that each of those lines represents one year's growth of a tree?

A. Yes, sir if it — cut at the proper height from the ground.

Q. 23. Do you mean to say that if you cut a cottonwood tree at any height from the ground, so long as it is above the roots that this section of the tree will not show these annual rings, each of which you say represents one year's growth?

A. It is more reliable to cut it at least three feet from the ground, than it is near the ground. The swell and the bulge around the bottom is not as reliable, as to cut it up at the proper height from the ground.

Q. 24. Still the wood in a cottonwood tree, as the wood in 568 any other tree, grows in layers from the ground to the top branch, don't it?

A. To some extent it does.

Q. 25. Will the stump near the ground have any more rings in it than the section cut three feet above the ground?

A. I think so.

Q. 26. How does it get it, if it grows in layers, one layer to the year?

A. As I have already stated, in these layers they conflict and run

together, and in counting it from the center of the tree out one way, and the center out another way, it will not count as many as it will, if cut at an ordinary height.

Q. 27. Then all that you really mean to say is that the annual rings will show you more distinctly if the tree is cut three feet from the ground than they will if it is cut two feet from the ground?

A. Cutting it at the proper height, that is, about three feet from the ground, it will get rid of a lot of little layers which start out like it is a year's growth that runs back into the main ring, which will indicate that it is a year older than it really is.

Q. 28. I will ask you this. If you can count 30 or 40 distinct brown marks, such as have been shown you on Exhibit 3 to Mr. Moody's deposition, they will indicate that the tree is at least 30 to 40 years old, does it not?

A. Yes, if it is cut a proper height from the ground.

Q. 29. If you can count these 30 or 40 lines running all 569 the way around a section, is it not positive proof, which no one can deny, that that tree is at least 30 or 40 years old?

A. Ordinarily that is the case.

Q. 30. I will ask you if you paid particular attention to the section of the cottonwood tree in the carpenter's shop on Jefferson Street, which is described in some of the depositions as being section No. 2, and which has the bark around it?

A. I counted the rings around it.

Q. 31. How many rings did you find?

A. I think there were 30 odd.

Q. 32. Are you a careful counter?

A. I looked at them and counted them twice, and there were 37 or 38 of them, and in some of these rings that go around, if you will follow them around, they will run back into one of the larger rings, that don't go all the way around.

Q. 33. Is it not a fact that that section No. 2 is almost a perfect circle, being slightly broader, at one diameter than the other?

A. Yes sir.

Q. 34. Is there any indication in that Section No. 2, that it was cut improperly close to the roots?

A. I don't know that there was.

Q. 35. Would you not say that that section was cut at a fair place on the tree, to indicate the growth of the tree?

A. Something near it.

Q. 36. Can you tell whether that section was cut two feet, three feet or four feet from the ground?

570 A. I don't know that I can tell exactly how high it is cut, but in cutting them ordinarily, to get away from the bulge of the roots, and to the round part of the tree, we cut them above the swells from the root.

Q. 37. Now you have made some mention here to these rings not always representing a year's growth, and you have stated that sometimes a freeze or a drouth makes the rings run together. You have also stated that the growth of the tree is made during the spring and summer. Now will you explain how it would be pos-

sible for a freeze during the spring or summer to make these summer growths run together?

A. Do you mean a winter freeze or a spring freeze?

Q. 38. I never heard of a freeze in the summer, but I am asking how a freeze in winter can make the summer growths run together?

A. A great many times a cottonwood is full of sap or water, and it will freeze and swell those little seams in there and expand them, and make them irregular, when they are near the ground.

Q. 39. You don't mean, however, to say that a freeze will make two of these lines where there was one before?

A. The water in these soft seams between the growth of a tree freezes sometimes and will make these seams irregular around the tree near the ground. At least that is my experience about them. I have cut into them when they were frozen and found the water frozen in those little soft places between the growth of the tree.

571 Q. 40. This freezing don't put two circles where there was one before, does it?

A. It makes them irregular sometimes.

Q. 41. Please answer my question. Do these freezes make two rings where there was one before? You can answer that yes or no, please do so.

A. It makes two sometimes, parallel around the tree, and not all the way. As far as the water freezes around the tree, in those little seams. It would indicate as though there were two seams where there ought to be only one.

Q. 42. Do you mean to say that freezing a cottonwood makes a double quantity of those narrow brown lines which are shown in a tree in its normal condition, as indicating each, one year's growth?

A. No-(?) ordinarily so.

Q. 43. You merely assume that it does double them sometimes, because they are irregular?

A. Irregular and the tree frozen.

Q. 44. You have stated that annual rings are not shown on cottonwood trees that grow in a brake. Are you positive of this statement as you are of any other statement you have made?

A. Ordinarily a cottonwood tree which grows in a brake of yellow cottonwood, does not show them as much so or anything like it, as the white cottonwood.

Q. 45. Are these cottonwoods that you have been examining a section of yellow cottonwood or white cottonwood?

572 A. White cottonwood.

Q. 46. Has anybody made any mention of yellow cottonwood before?

A. Not that I know of.

Q. 47. Then you don't mean to state that the annual rings in white cottonwood, which grow in brakes, are not shown?

A. Yes, sir, to some extent.

Q. 48. Please explain to what extent white cottonwood, growing in a brake, does not show annual rings as much as white cottonwood growing on a bank?

A. Because in a brake, it seems as though the sun and the weather

do not affect it so much as it would by itself. The rings are not near so plain and some of them, after you get away from the ground, are not shown at all.

Q. 49. Do you mean to say that sections cut across the grain of a white cottonwood tree which grew in a cottonwood brake, will not show annual rings at all?

A. Ordinarily they show their growth to some extent. In other words, they don't show it so plain and some of them don't show it plain enough to tell anything about the growth of them.

Q. 50. You say that you have been handling cottonwood since 1898. In what capacity have you been handling it?

A. I have cut and handled it, and floated it, rafted it and brought it to Memphis.

Q. 51. During all of that seven years, did you ever have occasion to count the rings in any of the saw logs?

573 A. I think the boys and myself counted some of them up on Coal Creek.

Q. 52. Did you count them, or did the boys count them?

A. We were all standing around the stump, and got to talking about it.

Q. 53. Was that a willow cottonwood or a white cottonwood?

A. A white cottonwood.

Q. 54. Did it grow on a brake or on a bank?

A. On a bank, very nearly by itself.

Q. 55. When, if ever, did you have occasion to try to count the annual ridges on a white cottonwood which grew in a brake, and on which occasion you were able to detect the rings showing the annual growth of the tree?

A. When I was cutting cottonwood on Coal Creek we cut some near the float road, in Long Hole, which did not show the marks anything like as plain as the one we cut up on the Creek. That was in 1899.

Q. 56. Still they showed so that if you tried to find them, you could find them could you not?

A. To some extent.

Q. 57. Is it not a fact that cottonwood trees which grow in a brake are more symmetrical, straighter and rounder than cottonwood trees which grow on a bank?

A. Yes sir.

Q. 58. Then, if this is the case, why is it that the brown lines indicating the termination of each year's growth would not be 574 more distinct in these symmetrical trees than in those which are irregular in their formation?

A. The white cottonwood, which stands in a brake close together, does now show it anything like as much as one standing out by itself, and a yellow cottonwood that stands in a brake, it is very hard to tell anything about the growth of it without you cut it down right at the ground.

Re-examination:

Q. 1. Mr. Brown has been asking you a good many questions about whether you ever saw any white cottonwood on which it was very difficult, if not altogether impossible to count the annual rings. I now ask you if about 10 o'clock on this day, March 24th, 1905, you were not in Mr. Brown's office, and did he not tell you that one of the exhibits which he had brought down, because of its porous growth, it was *not* difficult if not altogether impossible to count the annual rings, or make a statement in substance to that effect?

A. Yes sir, that is about what he said.

Recross-examination:

Q. 1. Is it not a fact that when Mr. Brown made that statement to you, he did not tell you that the section referred to had been taken from the top of a stump which had been cut for a good many years, and that owing to the overflows, the stump had become punky?

A. I think that is about what he said. Something to that effect.

(Cissna vs. Tenn., 524-532.)

575 The deposition of George W. Martin introduced as evidence on behalf of the State of Tennessee, said deposition having been taken in the case of State of Tennessee vs. Muncie Pulp Co. et al. (see Cissna vs. State of Tennessee, pp. 533-535), and is as follows:

IN THE
Chancery Court of Shelby County, Tennessee.
STATE OF TENNESSEE
vs.
MUNCIE PULP COMPANY et als.

Deposition of George W. Martin, Witness for Complainant, Taken, by Consent, at Nashville, Tennessee, on March 27th, 1905, Before Elliott M. Buchanan, Notary Public, in the Presence of Attorney-General Charles T. Cates and Albert W. Biggs, for the State; no Counsel Present for Defendants.

Direct examination by Albert W. Biggs:

Q. 1. Dr. Martin, will you state your name, residence and present occupation?

A. George W. Martin; Nashville, Tennessee; Professor of Biology, Vanderbilt University.

Q. 2. Will you also state how long you have been connected with Vanderbilt University, as Professor of Biology?

A. Six years.

Q. 3. Prior to that connection, how were you engaged?

A. Teacher of Biology at the Indianapolis High School,
576 for eight years.

Q. 4. What preparations did you make for your work as biologist?

A. Well, I specialized on botany at Wabash College, when I was a student; and I took a graduate course of three years at Wabash College, the University of Indiana, and in the Biological Department of Andover, Massachusetts, and also Cornell University.

Q. 5. What degree, if any, did you receive from these several institutions?

A. I took my Bachelor of Science and Doctor of Philosophy from the University of Indiana.

Q. 6. Dr. Martin, in the pursuit of your profession, you have of course paid attention to the growth of trees?

A. More or less, of course, understand me now, I am not a forester. While I have emphasized what is called andrology—that is, forestry—of course in teaching Botany I rehearse these facts every year—I have had a class in botany every year, and I emphasize that point.

Q. 7. Well, in your work and teaching, it is necessary for you to be acquainted with and teach the growth of plants, both trees and other plants, is it not?

A. Yes, sir.

Q. 8. The stem of the tree is how composed?

A. The stem of the tree is structure, is made up of what is called rings, and when these rings are subjected to microscopic test it is found that they are not rings at all, that they simply represent the conditions of cell life, which are modified by the conditions of 577 soil and climate as to size, color, etc. It is true that a tree—

perennial plants in the nature of trees, do not grow at the same rate the year around. They grow spasmodically; that is, they have their periods of work and their periods of rest. Now, there is a line, something on a gross way of demarcation between these periods of rest and periods of activity, and this line of demarcation is called commonly a growth ring. Hence, in normal conditions there may be one continuous period of growth, followed by one continuous period of rest, in which event there would be one so-called "ring" standing for a year's growth; but we find that these so-called periods of growth followed by periods of rest, do not always co-incide with plant, especially the tree, stands for the number of years of its age, especially so in all softwood growths, such as the tree of heaven, cottonwood, linden, etc.

Q. 9. Doctor, you say that these rings represent periods of growth. Will you name some of the causes which might interrupt the growth of a tree during the spring and summer season, which is the season of its growth, and thereby cause a ring which would not represent an annual growth, and which sometimes forms what is called a "False ring"?

A. The chief cause for producing such a phenomena as that is would be drouth. It is also true that these periods of active growth could be diverted or entirely stopped through other agencies, such

as any event that would defoliate the tree. For instance, insects, or a severe change in the temperature—like for instance, a frost. Suppose after the foliate has come out on a plant we have a 578 snow or a frost, causing the leaves to drop, thus putting the tree in its hibernating condition, and afterwards the tree starts out as if another spring is on hand. Drouth is the principal cause of the change, though insects, or a sudden change in the temperature may cause it. I may say that these changes are sometimes brought about by soil conditions—say, the tree can not get a proper amount of food stuffs, and when that occurs it calls a halt, and starts again. But drouths and insects are the chief things causing it.

Q. 10. With further reference to the difference between what usually represents the annual rings and one of those rings which are called "false rings"; relative to the ring extending around the entire circumference of the tree, have you anything to say?

A. I would say if there should be any false ring—probably I had better define a false ring. If the structure of the false ring is scrutinized, it will be found that the cells are of a different shape, color and structure from those made under normal conditions; and it is also true that when these false rings are made they usually do not extend clear around the circumference of the tree. They only represent so much food stuff which has been made chiefly by those regions of the trees that are most favored with food stuffs, and such growths usually take place on the side represented by the heaviest protruding limbs.

Q. 11. I believe you stated that in soft wood trees false rings, or rings not representing an annual period of growth were more likely to occur and were more easily detected by the natural eye, 579 and gave the appearance of a ring on the stump of the tree than in hard wood, did you not?

A. Yes sir.

Q. 12. And that this is caused for what reason?

A. That is due to this fact, that a quick growth tree will undertake to make a ring much quicker than a hard wood tree will. In other words, a hard wood tree is not so susceptible to these sudden changes as the quick growth tree. In other words, it is harder to get them to get to work than a soft tree. In other words, the soft-wood tree will respond to these conditions quicker than a hard wood tree.

Q. 13. Is the cotton-wood a quick-growth, soft-wood tree?

A. Yes, sir, all the poplars are.

Q. 14. And the cottonwood belongs to the poplar family?

A. Yes sir. Those South Carolina poplars you see in my yard there are soft-wood trees.

Q. 15. In some of the depositions which have been given in this case it has been stated that the growth of the tree presses these annual rings, or false rings, and that is why the rings appear larger on one side of the tree than they do on the other.

A. That is not true. The pressure in trees is about equal on all sides. The same thing will hold good in trees as in our bodies, and

this matter of thicker growth in some places or parts in a cross section, is simply a matter of food supply at the time the ring was made.

Q. 16. These false rings in trees of quick growth may sometimes extend around the entire circumference of the tree?

580 A. In other words, the rings are more liable to form in quick growth trees than in hard-wood.

Q. 17. You say false rings can easily be detected by examination. You mean with the naked eye?

A. Not so much as with the compound microscope.

Q. 18. And this detection can be more easily made and the difference seen between a false and natural ring, in hard-wood trees than in soft-wood trees, can it not, for the reason that a soft-wood tree is more susceptible to periods of growth and inactivity?

A. In other words, if there are false rings in a hard-wood tree, you can tell it better in a hard-wood tree than in a soft-wood tree.

Q. 19. Doctor, do you know by reputation Mr. D. E. Farnow?

A. Yes, sir, I have met the man personally, and I can say that he is now considered the best authority in the United States, and in fact one of the best in the world, along the line of trees and tree growth.

Q. 20. Doctor, do you hold any state position?

A. Yes, sir, I am State Entomologist, and have been for four years.

Q. 21. Your duties are what?

A. My duties are to inspect all nurseries and green houses, and premises where dangerous insects infest and diseases are supposed to thrive, and rid the state of them.

Further this deponent saith not.

(Cissna vs. State of Tennessee, pp. 533-535.)

581 The further taking of evidence, before Arkansas-Tennessee Boundary Commission, was resumed March 3rd, 1921, when the following testimony was taken, there being present Chas. A. Barton and C. B. Bailey, Commissioners; G. T. Fitzhugh, representing the State of Tennessee, and Earle King of Ewing, King & King, representing the State of Arkansas.

Mr. Fitzhugh: Mr. Chairman, there are certain grants, deeds and maps which I had expected to have present, to present to the Commission, and which I am anxious to have, and I will state that for a long time we had difficulty in locating them, but finally did so, and I have the assurance that they will be here to-morrow—practically everything that I want to use. I want to reserve the privilege of turning these over to the official stenographer to be made a part of the record, for the use of the Commission.

Mr. King: What maps?

Mr. Fitzhugh: One is Burke's map, and the grants are the Huddleston grant and Trigg grant—records which were in the old case of Cissna vs. Stockley.

Mr. Barton: Are any of the maps in the Supreme Court of Tennessee?

Mr. Fitzhugh: Yes.

582 Mr. Barton: Any the Supreme Court has we want to get; whatever the Clerk has we want to get.

Mr. Fitzhugh: I want to get the Burke map. That shows this land as was testified to by Mr. McSpadden, and as it existed just prior to the cut-off, and that is the map which I am anxious to get. I don't want to duplicate anything that is in the record, and will confer with the official stenographer and anything that is already in I won't burden the record with it. There are certain grants that I want copied into the record here, if they are not already in—the Huddleston, Trigg and any other grants bearing on this matter.

I would like to ask Mr. Bailey a few questions:

Mr. C. B. BAILEY, being duly sworn, testified as follows:

Examination.

By Mr. Fitzhugh:

Q. Mr. Bailey, Mr. Ewing, representing the State of Arkansas, among other testimony and depositions which were introduced by him, and which he instructed the stenographer to copy from the record in the case of Cissna vs. State of Tennessee, introduced the testimony of C. C. Bailey. May I ask whether that is intended to be C. B. Bailey and whether that is your testimony?

A. It is.

Q. You testified then on behalf of Mr. W. A. Cissna in the 583 *the case of Cissna vs. State of Tennessee?*

A. I did.

Q. The printed record in that case, containing the testimony under the head of "C. C. Bailey" is a typographical error, is it?

A. Yes, sir.

Q. Did you also testify on behalf of Mr. Cissna in his case of Cissna vs. Stockley?

A. I testified in one case only; however, my deposition was taken in a later case, I don't remember the style.

Q. Your deposition was taken in case of State of Tennessee vs. Muncie Pulp Co. et al., in which Mr. Cissna was also interested, was it not?

A. You were connected with the case and cross-examined.

Q. In view of the fact that your testimony was introduced here and I did not know it was the same person, the same being copied from the record under the head of "C. C. Bailey," will you please state whether, at the time you gave this testimony, you were or had been employed by Mr. Cissna, and were doing any engineering work or surveying in his behalf?

A. I had.

Q. Were you in his employ at the time the testimony was given?

A. Yes.

Q. Your employment related to a matter of establishing lines which would be in his interest in those suits, did it not?

A. No more so than anybody else's interest.

584 Q. I mean you were employed to run certain lines in his behalf?

A. I was employed to determine such things as I could—certain things, the lay of the ground, and did so.

Q. Now in that employment did you reach certain conclusions with reference to what was the boundary line between the states of Arkansas and Tennessee?

A. Yes, sir.

Q. You had that conclusion fixed in your mind at the time you became Commissioner?

A. Over a certain part of the territory, yes.

Q. Your views, I suppose, when you were on the Commission, were the same as those you had when you were in the employ of Mr. Cissna and at the time you gave your testimony?

A. They were.

Q. In the expense account of the Commissioners I suppose you have received vouchers for your expenses as Commissioner?

A. Yes, sir.

Q. I will ask you if it is not a fact that one half of this expense, other than that paid by the State of Tennessee, was paid by Mr. Cissna, through Dillard & Coffin?

A. Yes, I learned so at the last meeting here.

Q. You cashed your vouchers in this manner?

A. I turned them in directly to my bank and the bank collected.

Mr. Fitzhugh:

585 Q. I think this, with the exception that I want to introduce these grants, deeds and maps which are not already in, is about all.

Cross-examination.

By Mr. King:

Q. The fact that you were employed as a surveyor to determine certain matters in another controversy in which Mr. Cissna was interested, would not tend to bias or influence your opinion in this case, or your evidence?

A. It would not.

Q. The fact that Mr. Cissna, through Dillard & Coffin, has been paying one half of the expense of this case, and part of that going to you for services, would not tend to embarrass or influence your judgment, would it?

A. I have received nothing for my services, simply my expenses incurred in the matter.

Q. Do you know of anything, or have you at any time during these investigations been conscious of anything that would tend to bias you in doing just what the Supreme Court appointed you to do?

A. No, sir.

And further deponent saith not.

The further taking of evidence adjourned to March 24, 1921.

586 The Arkansas-Tennessee Boundary Commission met March 24, 1921, at 10 A. M., in the County Court Room, Memphis, Tennessee, there being present Mr. Caruthers Ewing, Counsel for the State of Arkansas, Mr. H. T. Fitzhugh, counsel for the State of Tennessee, and Commissioners, Chas. A. Barton, Horace Van Deventer and C. B. Bailey, at which time the following evidence was taken:

Mr. Ewing: I want to get this record straight. I was not present at the last meeting, but I notice a statement by Mr. Fitzhugh that that (Dec. 1st, 1920) was the first opportunity that he had had of appearing before the Commission. Inasmuch as there have been meetings at which I was not present, I would like to ask the Commission whether Mr. Fitzhugh has at all times been afforded the same opportunity that has been afforded me to be present.

Mr. Barton: Yes, I wrote him a notice at the same time I wrote you.

Mr. Ewing: So, then, the question of presence or absence is not a matter with which this Commission has anything to do.

Mr. Fitzhugh: I referred only to the meeting at the time I happened to be called away on my vacation.

Mr. Barton: We gave the same notice to Mr. Fitzhugh that we gave to Mr. Ewing. I think, Mr. Fitzhugh, it might be well for you to state, if you want to put it that way, that we gave you the same notice that we gave Mr. Ewing.

Mr. Fitzhugh: I didn't state that you had not given me notice, but I had to be away at that time.

Mr. Ewing: The language used is "this is the first opportunity," and I thought you had had the same opportunity I had had to be present, and if you have not had I would like to know why. That was what I wanted to get the record straight about.

Mr. G. J. McSPADDEN, recalled for cross-examination, testified as follows:

Cross-examination.

By Mr. Ewing:

Q. I believe you first commenced to roam about the locus in quo at the age of eleven.

A. I never began to roam about the locus in quo at all. I stated that I first visited my sister's place on the 18th of September, 1882,

but I was not roaming. I had rather a definite idea of where I was going.

Q. At that time I take it you had not evolved from your inner conscience that this lawsuit would happen or that there would be any trouble about any of the questions raised in any of the lawsuits?

A. No, that is true. I don't think I knew much about what a lawsuit was at that age.

Q. You refer to what the evidence shows in various cases. Have you had access to any evidence in any case to which counsel have not had access?

588 A. I don't know to what cases counsel have had access.

Q. Will you enumerate the cases wherein there has been evidence which you undertook to state showed certain things—what cases did you mean?

A. I don't recall just what I said in my prior examination. It has been some weeks ago, but I can state to you the cases in which I was familiar with the evidence.

Q. State those cases.

A. First, the case of Cissna vs. Stockley tried in the District Court of Helena.

Q. Was that about the towhead?

A. Yes, that was about the east end of the Huddleston tract.

Q. Is that familiarly known as the towhead?

A. It included, of course, part of the towhead; the towhead is much larger and that property at that time may not have included all of the south part of the east end of the Huddleston tract. I think some of it has been added to the south of the towhead since then. Then there was the case of Stockley vs. Cissna, in the United States Court at Memphis.

Q. Do you know whether the evidence in that case has been offered in this suit?

A. I do not. Then there was the case of Stockley vs. Cissna in the state court, which went to the Supreme Court of Tennessee.

Q. Was there any evidence in that case that was not in the other cases, and if so name the witnesses?

589 A. What other case do you refer to?

Q. Stockley vs. Cissna?

A. Well, you said any evidence in that case not in the other case.

Q. Not in Stockley vs. Cissna. I meant the other case you mentioned.

A. In the case in the United States Court at Helena—I think there was.

Q. Name the witnesses.

A. In Stockley vs. Cissna tried in the Tennessee Court there was the testimony of Capt. Joplin and I think a Mr. Dean taken from the record in the United States Court at Memphis, and there was the deposition of—I believe you are right; I believe they had the same witnesses in both cases.

Q. Go ahead and name the cases.

A. Then there was the state case in which I was not counsel, but

with the evidence in which I was familiar by reading it and by conversing with Col. Carroll.

Q. You mean the State of Tennessee vs. Muncie Pulp Co.?

A. Yes; and there is the later case of the State of Tennessee vs. Muncie Pulp Co. I think it goes under the same style; the case Col. Carroll tried in Covington.

Q. Name a single witness that testified in that lawsuit that had not testified in the others.

A. I don't know anything about who testified in that law-
590 suit. If you want to know the witnesses who testified in those lawsuits you can get the records and look it up. That would be better than my recollection.

Q. I am trying to find out whether you think there is the evidence of any witness you have read that has not been offered before the Commission.

A. I have not the slightest idea what evidence has been offered before the Commission except my own.

Q. Did you know the width of the river at the apex of Dean's Island had increased something like 2,600 feet between 1823 and 1876?

A. Do you mean the apex at the south east or south side of it?

Q. Do you mean you could not tell what would be properly classed as the apex of Dean's Island?

A. I would think the apex would be the top, but you seem to use it in a different sense.

Q. I will ask you if you think the following phraseology was accurate—if at page 19 of a brief filed in the case of State of Tennessee vs. Muncie Pulp Co., the following statement was made: "According to the survey of 1821 (shown by 1823 map) the width of the river at the apex of Dean's Island was 5,000 feet; whereas at the date of Col. Suter's map of 1874 it was 7,600 feet." The question is if that is the language of one of the parties or of the counsel of one of the parties, would you feel that you could understand what was in his mind?

591 A. No, I could not, because he has manifestly used the word "apex" in an unnatural meaning, and evidently intended the width of the river as south of Dean's Island and the maps from which he has made his statement are so inaccurate and were never actual surveys, that I am astonished at any party making them.

Mr. Fitzhugh: You don't mean that is in this record?

Mr. Ewing: I mean exactly what I said.

Mr. Fitzhugh: In what case?

Mr. Ewing: My question was if it was the language of the counsel for the State of Tennessee in the case of the State vs. Muncie Pulp Co., if it was an accurate statement.

A. You will observe that he used the word "apex," when he evidently meant the south.

Q. Do you think the statement as to the increase in the width of the river, as made in the brief signed by the Attorney General, is a correct statement?

A. No, I do not. I don't think his authority points out anything to justify anybody in the world in coming to a sound conclusion or forming the opinion he had evidently in mind.

Q. Assuming that the following statement is made at page 17 of the same brief filed on behalf of the State of Tennessee and signed by the Attorney General: "An examination of this map will show that from 1823 to 1874 there had been cavings and erosions 592 from the east bank of Tennessee, south and west of Dean's Island and along the east bank of Island 37," would you say that was an accurate statement?

A. I would say that it was not; certainly not in accord with the evidence, except as to the southeast corner of Dean's Island caved considerably, having lost several hundred acres, and to the south of Dean's Island I have no knowledge; no witness has testified particularly as to that part.

Q. Do you recall whether in the first case of Stockley vs. Cissna you, as attorney for Mr. Stockley, offered any evidence as to what had happened to the Trigg 152 acre tract prior to the cut-off?

A. On Island 37?

Q. Yes.

A. It had all about caved away. I think I proved that conclusively.

Q. Do you remember whether you offered any evidence about the Potter 640 acres which is on the map of Mr. Humphreys?

A. I offered Mr. Humphreys' map in evidence and proved every line on it and every figure on it, and I think you can take it as absolutely correct.

Q. I wish you would answer the question. The question I asked was not whether you offered the map and whether you proved its lines, but do you remember whether you proved anything 593 about what had happened to the 640 acre Potter tract?

A. Yes, I proved by this map that it had caved away as indicated on the map, on the southeast corner of Island 37 and the southeast corner of the Huddleston tract also.

Q. Do you remember whether you offered any evidence as to the width of the river just before the cut-off, between Island 37 and Dean's Island?

A. Yes, I did.

Q. What was the width shown to be?

A. I have forgotten. You can easily take your rule and measure it on the Humphreys map.

Q. Do you remember Capt. Joplin, Capt. Montana and Capt. Friend?

A. Capt. Montana and the man named Friend did not testify in the case I was in. Capt. Joplin did.

Q. You never heard the evidence but read it?

A. I read it in the Muncie Pulp Co. case and talked with Col. Carroll and Mr. Biggs about it, but my recollection is not definite.

I remember Capt. Montana and Mr. Friend as having testified in that case.

Q. Do you recall whether the Arkansas bank was making out into the river and the Tennessee bank was caving right south of Dean's Island prior to the cut-off?

A. Yes, there was some evidence offered as to that. It was, however, proved that Dean's Island making was merely a dry bar, sand bar which is part of the river bed.

Q. Have you any kinspeople interested in the questions
594 which are before this Commission?

A. No. My sister and her children own the property of Mr. H. W. Stockley, but every matter they have any interest in has been decided either for or against them by the courts and they are not interested in any matter that is in litigation.

Q. Do you remember the grant obtained in 1901 by Mr. Stockley?

A. Yes, I have read that grant.

Q. Do you remember the land as described in those grants of date Nov. 26th, 1901?

A. I beg your pardon, do you refer to the tract of land?

Q. Do you remember the tracts of land in the entry of April 20th, 1901, and the grant of November 26th, 1901, as vacant and unoccupied land?

A. Yes, I believe so.

Q. Do you recall that a reference was made to the channel of the river as it had been run in 1876?

A. I don't recall that. The grant, however, will speak for itself and so will the entry.

Q. You have undertaken to give the evidence of others and your conclusion, and I was testing your memory in regard to it.

A. You are mistaken about my undertaking to give the evidence of any others.

Q. You say you have not undertaken to say what the evidence shows?

A. Except conclusions from the evidence and general trend and purport of the testimony, but I have not undertaken to give the language.

595 Q. Did you understand from your extensive experience in this matter and your long connection with it, that McKenzie Chute was, prior to 1876, known as the Mississippi River channel?

A. No, I didn't know that McKenzie Chute was known as the channel of the Mississippi River. I saw that for the first time on Capt. Suter's map. I always understood that the old main channel went around north of Island 37.

Q. You know that in the record in the case that you tried there was a deed offered by you that was dated 1889 and appears at pages 223 and 224 of the printed record; that in that deed there was a recital that whenever the Mississippi River was mentioned in the deed McKenzie Chute was meant?

A. Yes, I recall that; that was written by some person who knew nothing about the river and nobody for a moment undertook to say, or even thought that that deed was of any importance as locating the

river or as giving any correct lines of the river bank. I think that was a deed to a mortgage company by old Mrs. Smith and of the mortgage company to its vendee; however, even in that deed it was very largely correct, as you will see if you will look at Maj. Humphreys' map; it had no particular reference to McKenzie Chute.

Q. At all events, if, in 1889, a person dealing with the property referred to McKenzie Chute as the Mississippi River, and distinctly stated that where the Mississippi River was mentioned in the deed,

McKenzie Chute was meant, that fellow didn't know the facts?

596 A. Yes, that fellow didn't know the facts. I think you can see that he was referring to this tract of washed-away land, and he could not at that time distinguish McKenzie Chute from the old bed of the river, or to the east of Island 37, and when he referred to the old bed of the river he possibly had in mind the river east of Island 37 instead of McKenzie Chute; in other words, he could have been mistaken.

Q. If the deed recited that where the Mississippi River is mentioned McKenzie Chute is meant, you would think that the man was in error in making that designation?

A. I would think that was a contradiction of terms.

Redirect examination.

By Mr. Fitzhugh:

Q. Mr. McSpadden, on former examination reference was made to the Burke survey and that map of 1868 was filed in the Chancery Court in the case of Nelson vs. Trigg. I will ask you if it is not a fact that that map—a copy of it or the original—was filed in the case of Stockley vs. Cissna in the state court?

A. Yes.

Q. That map has been sought for and is not with the Clerk of the Chancery Court here nor with the Supreme Court. You saw that map, yourself?

597 A. Yes, and proved its authenticity by Miss Lottie Burke; however, that was filed in Tipton County.

Mr. Barton: Do you suppose that map could be found at Covington?

Mr. Fitzhugh: The record of that case in the Supreme Court recites that there is exhibited with that record a tissue map; but the Clerk of the Supreme Court sent me the record, and is supposed to have sent all the exhibits, but didn't send anything except the maps that I have here.

Q. Assuming that it has been lost, I will ask if, from your personal examination of that map, it didn't show that the Trigg tract, at the time that survey and map were made, consisted of some 1,300 acres of land?

A. Yes. You will find his report with the Chancery Court of Shelby County made in that case.

Q. In the case of Nelson vs. Trigg Mr. Burke reports that in 1876 one thousand acres had been washed away by the cut-off.

A. Yes.

Q. Have you recently—this morning—at my request examined some of the deeds and decrees vesting title in the case of Nelson vs. Trigg, for the purpose of ascertaining whether they did make reference to the Burke report and whether they showed that after the cut-off there remained 33.75 acres of this Trigg tract attached to the main Tennessee shore and 305.75 acres to what was known as Centennial Island?

A. Yes, you showed me those deeds and decrees of the 598 court in the book you have there. My recollection is that the small tract was 35 acres.

Q. Do you know from your examination of the records in Nelson vs. Trigg and your examination of these decrees and deeds, that the reports of Mr. Burke as to this estate were accepted as absolutely correct?

A. Yes. They sold out the land that way. There is no question about the river washing through that tract of land.

And further deponent saith not.

Mr. CARUTHERS EWING, counsel for the State of Arkansas, being duly sworn, testified as follows:

Mr. Ewing: When I was not present, it seems that Mr. Fitzhugh, for some reason, caused the record to show the relation of Mr. C. B. Bailey to this situation. I want to say that when the Commission was about to be appointed I recall that I knew, as every person connected with the litigation must have known, that Mr. C. B. Bailey had testified as a witness and was called by Mr. Cissna, and his evidence had run through every one of the cases. I had been over that territory with Mr. Bailey and knew that he was familiar with it. I knew that Mr. Horace Van Deventer had been appointed by the State of Tennessee as its representative on a Commission, or his name had been suggested and accepted. That Commission, with a Commission appointed by the State of Arkansas, was to run the line. On March 28th, 1918, I wrote Mr. Fitzhugh and suggested Mr. Bailey and mentioned information I had with respect to Mr. Barton. He later named, on behalf of the State of Tennessee, Mr. Van De Venter, who was entirely and wholly agreeable, and we agreed on Mr. Barton; and I want a copy of that letter to go into the record as Exhibit No. 1 to my evidence.

Mr. Fitzhugh, for some reason with which I am not familiar, undertook, through the examination of Mr. Cissna, to develop the circumstances of the bringing of a suit, (which Mr. Cissna did not bring, but which I brought), and the payment of the expenses; and while I think the Commission is charged with no duty except to run this line just like the Supreme Court said it should be run, I am not willing that there should be any misunderstanding about the facts in this particular.

About Christmas, 1910, I told Mr. W. M. Kavanaugh, a warm personal friend of mine, of Little Rock, Arkansas, of what I thought was an egregious error which had been committed by the Supreme

Court of Tennessee in locating the boundary line. I told him that I thought the State of Arkansas ought to protect its territory and its citizens, and that I felt absolutely sure that the Supreme Court of the United States would never approve the principles announced by the Supreme Court of Tennessee. I told him that which was conceded in oral argument in the Supreme Court of Tennessee, to-wit, that Mr. Albert Biggs had, as counsel for the State of Tennessee, admitted that if the middle of the Mississippi River was as I was insisting, that the State of Tennessee had no claim to the land; and I asked him to talk to the Attorney General of Arkansas, whose name I did not even know at that time, about Arkansas taking action. Mr. Kavanaugh told me that the Attorney General's name was Hal Norwood, and that he was a good friend of his. Whereupon, he did talk to him, and later I got this telegram and I ask permission of Mr. Fitzhugh to read it into the record instead of taking it out of my files:

"Little Rock, Ark., January 2, 1911.

"Hon. Caruthers Ewing, Lawyer, Memphis, Tenn.:
Prepare papers and come to see me. (Signed) Hal L. Norwood."

On January 3rd, 1911, I wrote this letter:

"Hon. Hal. L. Norwood, Little Rock, Ark.

"January 3, 1911.

DEAR SIR: I have your telegram of the 2nd instant, directing me to prepare complaint in the matter of State line and to come to Little Rock. I will comply with this request, but it may be as much as a week before I can complete the bill and get away from here. I am preparing briefs for the Court of Civil Appeals, which meets Monday, and for that reason I am somewhat overcrowded.

Another reason why I will be delayed is that the decree pronounced by the Chancellor has never yet been agreed upon by counsel. The attorneys for the State of Tennessee do not seem to know exactly what decree they want entered. The local attorney here prepared a decree and sent it to Mr. Cates, the Attorney General, and he has not returned it."

That had reference to this situation: After the case was remanded by the Supreme Court, proceedings were had in conformity to the decree of the Supreme Court. In order for the state to recover anything it had been necessary to abandon the idea that it could get anything with the middle of the river where it run in 1876, and thereupon the Supreme Court directed the bill to be amended so as to get the line of 1823, which, so far as I know, has been correctly outlined or indicated by Maj. Humphreys. Maj. Humphreys had invariably, half a dozen times, testified that he was not instructed to and did not look for the middle of the river immediately preceding the cut-off. That statement is in his evidence in several places. Mr. Biggs, or Mr. Bullington, I believe, prepared

a decree, and we agreed on that; however, there was some difference as to which decree ought to be entered, and that is what I referred to in that letter. It has no bearing on the present matter at all, except I wanted to explain it.

I forgot. I talked to Mr. Norwood after Kavanaugh went back home. He came through Memphis and I saw him, but I 602 only told him what I had told Kavanaugh, and that was preceding this telegram.

I prepared a bill and went over there and went over the matter with him thoroughly, and he made, or said he made, an investigation on his own account, and later the bill was filed and the matter of expense was discussed. He told me that under the law of Arkansas a certain appropriation was made for the Attorney General's office and that he could use it within his discretion; but they, I think, had used it all up by that time, or nearly, and I asked who was going to pay me for riding around and pay for printing. He told me that he had enough money to cover my personal outlay and that if I would send the briefs to him, or anything I wanted printed, he would have the state printer do it in Arkansas. Well, the first thing we had printed was in September, 1913. I don't want to enlarge this record, but will show Mr. Fitzhugh, who is sitting beside me, an original letter from Mr. Norwood's successor, Wm. L. Moose, Attorney General of Arkansas, showing receipt of my brief and his instructions to the printer to have it printed and to send me the necessary proofs to read.

The matter was, as everybody knows, interminably delayed for one cause or another, and I am not going to fill this record with a lot of unnecessary correspondence, but simply that which shows who is behind this lawsuit, and I want that made clear.

John D. Arbuckle succeeded Mr. Moose as Attorney General of Arkansas. I wrote him a letter but he didn't seem to know anything about the case, so I wrote to Mr. Hal Norwood, who was a practicing lawyer at Little Rock, and told him to go around and explain it to this gentleman. To his attention the case 603 evidently had never been brought. On July 11, 1918, I got a letter from Gen. Norwood merely saying—

"I hand you copy of letter that I have just written Gen. Arbuckle. Please let me know if you think it fully covers the case. If you can suggest anything else that I should say I will gladly do so."

This is signed "Hal L. Norwood", with this postscript in Mr. Norwood's handwriting, with which I am familiar: "If Gen. Arbuckle does not pay the amount, we should ask the Legislature in January to make a special appropriation. I am sure we can get the Governor to recommend it." I was insisting that as the arrangement was made with Gen. Norwood he was necessarily obliged to see that Arkansas kept faith. I would like for the stenographer to copy the letter of July 11th, 1918, written to the then Attorney General by his predecessor in office.

(Letter referred to is as follows:)

"July 11, 1918.

"Hon. John D. Arbuckle, Attorney General, Little Rock, Ark.

DEAR SIR: I am in receipt of a letter from Hon. Caruthers Ewing of Memphis, with which he enclosed a copy of the correspondence between you and him. He requested me to speak to you again about this matter. I observe from the correspondence that Mr. Ewing has correctly stated the facts in connection with this litigation.

Mr. Ewing first brought to my attention as Attorney General, the state line controversy in 1910. I took some time to look into the matter and decided that Mr. Ewing's contention as to the state boundary was correct, and that unless the interest of Arkansas was looked after this state would probably lose some valuable territory.

I then, as Attorney General, directed Mr. Ewing to prepare 604 a bill and file it in the Supreme Court of the United States.

I brought the matter to the attention of some members of the General Assembly of 1911 and a concurrent resolution was introduced directing the Attorney General to institute such action or actions in the Supreme Court of the United States as in his judgment might be necessary and proper to settle the boundary lines between the States of Arkansas and Tennessee, to the end that the sovereignty and jurisdiction of the State of Arkansas might be defined and determined by said Court. The resolution was adopted by the House and Senate (Special Acts 1911, p. 1341). I assured Mr. Ewing that Arkansas would take care of the expense of the litigation and pay him a reasonable fee.

The Legislature of 1911 appropriated \$10,000.00 for the Attorney General's Department, to "pay expenses connected with suits brought by or against the state or state boards, including costs, counsel fees, traveling expenses, and all contingent expenses connected with the department." I intended to pay Mr. Ewing a liberal fee out of this appropriation and to pay other expenses in connection with the litigation over the boundary line. But Gov. Donaghey, being politically antagonistic to me, vetoed the appropriation, and therefore I could not fulfil the state's obligation. You have been fortunate in not being required to conduct your department without a cent of money for stamps, stationery, and other expenses.

Soon after Judge Moose became Attorney General I brought to his attention this litigation between Arkansas and Tennessee and he assured me that if the Legislature made a sufficient appropriation for his department that he would pay the expenses of the litigation, including a reasonable fee for Mr. Ewing. I appeared before a committee of the Legislature with Judge Moose and argued the necessity of a reasonable appropriation for the Attorney General's department, and the Legislature appropriated, in 1913, \$5,000.00, and, as we had a lawyer then for Governor, he had sense enough to know that certain appropriations should be made, and approved it. Judge Moose took care of part of the expenses out of this appropriation.

In my report to the Legislature I mentioned this controversy over the boundary line between the States of Arkansas and Tennessee and recommended an appropriation of \$750.00 to cover the expenses, and stated that Mr. Ewing, who had filed the bill for the State of Arkansas, should be compensated for his services (see pp. 18-19 of my report). The Legislature of 1913 had before it my report and recommendations as to this litigation when it 605 made the appropriation of \$5,000.00 at the beginning of Judge Moose's term.

This litigation had the indorsement of the Legislature. Mr. Ewing has rendered valuable services to the State of Arkansas, upon the assurance of those who were authorized to act that he would be reimbursed for expenses and be paid a liberal fee, and it does occur to me that you, as the successor of the officials who, at the instance of the Legislature, obligated the State, should fulfil the state's financial obligation and its solemn promises.

I have gone into the history of this matter at length because I felt sure that if you thorough understood the circumstances you would more clearly see your duty in the premises. The last time I talked to you about this case you appeared to be inclined to the opinion that your department should not now take care of any expenses connected with litigation commenced before you became Attorney General. I think that the Attorney General's Department, under the circumstances, should feel under the same obligation to fulfil the state's promises, as if this litigation had been started since you have been in office. I do hope that you will fully and carefully consider the matter and make such disposition of it as your high sense of justice as a lawyer dictates.

I am, with great respect, Yours very truly."

(Above letter is copy of carbon copy of letter written by Hal. L. Norwood to his predecessor, John D. Arbuckle.)

Well, they paid me, from time to time, in amounts that didn't amount to much, \$500.00 or \$400.00, something like that at one time and another, and I was after them to raise some money. I got hold of a report that Mr. Arbuckle made to the legislature, in which he used the language that I represented a large corporation interested in this matter, and that the legislature should make an appropriation to defray the expenses and some small fee. That 606 aroused my apprehension about a subsequent fee with the legislature, and that I had to deal with them. So on July

20, 1918, I wrote Mr. Arbuckle a letter, which I let Mr. Fitzhugh read. It is not necessary to set it out, but I called Mr. Arbuckle's attention to this statement, advising him that he was wholly wrong about it, and that I only represented Mr. Cissna in a former litigation.

On Nov. 30th, 1918, I wrote the Attorney General of Arkansas as follows:

"November 30, 1918.

"Arkansas v. Tennessee.

Hon. Jno. D. Arbuckle, Attorney General, Little Rock, Arkansas.

DEAR SIR: In the above case a Commission, as you know, has been appointed to run the line according to the contention of the State of Arkansas.

There will be considerable expense incurred by the Commission in its work. Tennessee has arranged to pay one-half of the expense on vouchers furnished or drawn by the Commission. I take it that Arkansas will make some arrangements to meet its part of these expenses as they are incurred, and I would appreciate instructions from you as to the course to pursue."

His letter in reply is as follows and is written on the letterhead of "State of Arkansas, Office of Attorney General, Little Rock."

"Dec. 2, 1918.

Hon. Caruthers Ewing, Memphis, Tenn.

DEAR MR. EWING: Your letter of November 30th duly received 607 and contents noted.

I shall take pleasure in calling the attention of the Governor to the fact that a commission has been appointed to run the line according to the contention of the State of Arkansas, in the case of the State of Arkansas vs. Tennessee, recently decided by the Supreme Court of the U. S.

I am sure the Governor will take pleasure in recommending that the Legislature make an appropriation to cover the portion of the expense to be borne by the State of Arkansas.

With kindest personal regards, I am, Yours very truly, — — —, Attorney General."

The letter came from the office of the Attorney General, but is not signed by him—evidently and obviously an oversight. The Attorney General sent me copy of a letter of that date, that he wrote to Governor Brough, which is as follows:

"Dec. 2, 1918.

Hon. Chas. H. Brough, Governor of Arkansas, Little Rock, Arkansas.

MY DEAR GOVERNOR: Enclosed, I am sending you letter from the Hon. Caruthers Ewing of Memphis, Tennessee, who represented the State of Arkansas in the case of Arkansas vs. Tennessee and in which said case there was recently rendered a decision favorable to the State of Arkansas.

It now becomes necessary that the dividing line be fixed by a commission already appointed.

It is entirely proper that this matter should be submitted to the Legislature at its coming session in order that appropriation 608 may be made to properly care for such expenses as the commission in its work may incur. Yours very truly, — — —, Attorney General."

It is signed by the Attorney General, that is the original, I presume, was signed by him. He just sent me a carbon copy of his letter of December 2nd, 1918.

He sent me on December 6th, 1918, copy of a letter from Governor Brough, asking for an estimate of the expense, so as to get the legislature to recommend it. I have not got that letter, I have looked through my files for it; I think I gave it to Mr. Barton and asked him to take it up with the Governor.

Mr. Barton: I probably have that in my files. I remember either receiving it or your saying something about it.

Mr. Ewing (continuing): I had no way to estimate the expense of the Commission, so sent the letter to Mr. Barton, or gave it to him, I don't know which, but I know it is not in my files and I know I told Mr. Barton that he was in position, and I was not, to make the estimate of the expense, and for him to give the Governor the information that he wanted from me. I believe that is correct, is it not, Mr. Barton?

Mr. Barton: Yes.

Mr. Ewing: The Attorney General then sent me a copy of letter he said he had just received from Governor Chas. H. Brough, as follows:

609

"December 4, 1918.

Hon. John D. Arbuckle, City.

MY DEAR GENERAL: I am in receipt of your letter of December 2nd, and will gladly recommend to the legislature that they make provision to pay half of the expense incident to establishing the line between Arkansas and Tennessee, in accordance with the recent decision of our United States Supreme Court.

I wish, however, that you would ascertain what amount you feel is necessary for this purpose and advise me.

With the very best of wishes, I am, Yours very cordially, (Signed) Charles H. Brough, Governor."

As I said I passed the matter up to Mr. Barton to tell them about the expense, as I knew nothing about that.

I never heard anything more about it for quite a little while. The next thing I heard was something like 40, or 50, or 60 days, except in the meantime it is more or less in my mind, with some degree of certainty, that Mr. Barton told me he had communicated with the Arkansas officials as to the expense.

Mr. Barton: I did communicate with them and I did so inform you.

Mr. Ewing (continuing): Any way, I had that in my mind, that

I was out for the time being as far as getting up the estimate of the expense was concerned. The next thing I received was on February 14, 1919. Mr. Arbuckle, Attorney General, wrote me a letter, 610 calling attention to the fact that he had again brought to the Governor's attention that I was representing the State of Arkansas in this matter.

The next I got was February 15, 1919. Mr. Barton wrote me this letter:

"Feby. 15, 1919.

Mr. Caruthers Ewing, Memphis, Tenn.

DEAR SIR: Early in the year I wrote both Gov. Roberts and Gov. Brough urging an appropriation for the Tennessee-Arkansas Boundary survey.

Governor Roberts asked for an estimate, which I furnished. He promised to recommend an appropriation in a special message. Governor Brough did not reply, though I wrote him a second letter, enclosing my estimate. Please do not let the Attorneys-General forget to push this matter now. We do not want further delay. Very truly yours, (Signed) Chas. A. Barton."

Mr. Ewing (continuing): I do not know whether Roberts succeeded Brough or Brough succeeded Roberts.

Mr. Barton: That was Roberts of Tennessee.

Mr. Ewing (continuing): I thought you meant an Arkansas Governor. At all events, on February 17, 1919, I wrote Mr. Arbuckle, and simply copied the letter Mr. Barton wrote me, and after copying his letter I added the following: "I do hope you will not allow 611 this to be overlooked. I am leaving today for Europe and therefore can not give the matter further or additional attention." I went to England. Later I got a letter dated July 17, 1919, from Jno. D. Arbuckle, Attorney General, informing me that at his special instance the governor had asked the legislature for an appropriation and that I might take the matter up with the governor, which I did by letter of July 18th, 1919. I didn't get any answer to it, so I wrote a friend of mine, Chas. T. Coleman, a lawyer of Little Rock, and asked why Arkansas didn't provide money to prosecute a suit that I had instituted at the instance and on behalf of the state.

On August 14, 1919, Mr. Coleman wrote me that he had talked with the governor and the governor had told him that both he and the attorney general had brought the matter to the attention of the last legislature, "but that it was choked out by a flood of local bills"; that if he called a special session the matter would be brought up. He further said:

"The Governor asked me to ascertain from you the estimated amount which this state would have to contribute for the survey. If it is not too large, and he can find some way to raise it, I am sure he would be willing to do it."

The matter rocked along and I wrote the Governor about it and on September 11, 1919, he wrote me and said:

"I take pleasure in stating that I shall include this matter in the special call convening the Forty-second General Assembly in extraordinary session," etc.

612 Then I kept after the matter to find out what happened to the appropriation and the Governor wrote me, or rather a letter came from the Governor's office, signed by his private secretary, saying:

"In reply to your letter would advise that no appropriation has been made for this project as the regular session of the legislature refused to take the matter up."

That was in accordance with what Mr. Coleman had written. The letter proceeded:

"I think it was more of an oversight than anything else for the Governor, if I remember correctly, called their attention to it in his message. There is no available fund at this time in the Treasury to pay Arkansas' part of this expense but you may rest assured that the Governor will emphasize this important matter before the next regular session of the legislature. There is no way now that this could be financed from our standpoint, except through a deficiency proclamation, and if it should be done in this way of course the warrants would either have to be carried or discounted at the banks."

I found myself in that situation and not having in any shape, form or fashion, brought this suit any other than under employment, with the expenses and fees to be paid by the party in whose name and for whose behalf it was brought, I felt that it put me in an awkward position not to see and know that a fund was provided to carry out the decree of the Supreme Court of the United States, that I had invited. I talked to Mr. Barton about it and to no other member of this Commission. I told Mr. Barton that I was going to find some way to get that money and take my chances on getting it back from the State of Arkansas. I sent for Mr. Cissna, and it is

not my habit to take the advice of clients—I generally give 613 it. I told him what I was going to do and I told him that if he would not finance it I personally would finance it. Mr. Cissna told me at the time that he was short of money, but that he, himself, if I said so would provide the money, but right then he was not in position to do so. I got hold of Mr. Barton and told him,—and Mr. Barton is here and can say if in the remotest degree I am inaccurate—I told him to go right ahead that I would personally guarantee any expense, for them to draw drafts on me or send to my office and I would see them paid. I believe that is what I told you, Mr. Barton.

Mr. Barton: That is right.

Mr. Ewing (continuing): The drafts did come to my office and I personally paid them, without any reimbursement at the time.

Later, when I had to go to Europe, I sent for Mr. Cissna and told him that I did not know how much this thing would run to and I did not care, we had to pay it; that he ought to arrange some way to finance the thing instead of my doing it, and let him take his chances on getting it back; but I gave him my assurance that no state, with the documents I had, would decline to make the appropriation. He asked how he would know when the drafts came. I told him to arrange with his bank to take care of them. He told me that if I would have the drafts come to my office—I think that is the way he said it—and be O. K.'d by somebody in my office and presented to Dillard & Coffin, they would be paid and he would look to me to get the money back from the real debtor—the State of Arkansas.

614 That is the situation of this lawsuit and of this financing which has been brought into this record; and I made this long and detailed statement because I am not willing to be put in the attitude of having appeared to represent the State of Arkansas if I didn't represent it, nor of permitting any private individual, with my knowledge or consent, to secretly finance anything pertaining to this litigation.

Cross-examination.

By Mr. Fitzhugh:

Q. You read the testimony of your client, Mr. Cissna?

A. I glanced over it, yes; I didn't read it, but I got enough to see what he said.

Q. His testimony was correct, wasn't it?

A. If you will point out any statement on which you want my judgment as to its correctness I will give it.

Q. In what he says concerning the suit, his understanding as to the origin of it?

A. I am not willing to answer any such question. If there is anything—any statement—you want my judgment on, as to its correctness, I will pronounce it; if you will tell me what you want me to pronounce judgment on; but I am not willing to state generally that any man's evidence is correct. I want to add this; mine is absolutely correct in every detail, and the documents are here before me with respect to everything I stated, except what passed

615 between Mr. Cissna and me, and Mr. Barton is here and knows I told him I was going to state that in substance to Mr. Cissna; and Mr. Barton knows that I thereafter told him that I had done it.

Mr. Barton: I don't recall that you told me anything about Mr. Cissna. You told me that you were going to personally see that it was financed. You said "you go right ahead and send your drafts here and I will see that they are paid;" we sent them to Mr. Ewing's office until he went to Europe, and then his office directed us that Dillard & Coffin would pay them, and I never knew until long after Dillard & Coffin was paying them that Mr. Cissna had anything to do with it.

Mr. Ewing: You are entirely right about that, because I remember now, since you mentioned it, you asked half a dozen times, "who is back of this" and I finally told you that I personally would see that these expenses were paid, and I remember making the statement that I supposed I was good for whatever you had, and I certainly would pay it. The only difference is that Mr. Cissna is loaning the money now instead of me. I don't know really whether he has ever paid me back the sums I advanced. I have never, directly or indirectly, received one cent from Mr. Cissna as compensation.

By Mr. Fitzhugh:

Q. I would like for you to state whether you ever gave any such information as that to me prior to the examination of Mr. Cissna—I would like for Mr. Barton to state.

Mr. Barton: Yes.

616 Mr. Fitzhugh: Prior to the examination of Mr. Cissna?

Mr. Barton: Yes—well, let me see. I remember once when I called at your office for some reports or something, I think you asked me if Cissna was not paying these drafts, or said something about your understanding he was, and I believe I stated that I understood that he was.

Mr. Fitzhugh: During the examination of Mr. Cissna the record shows this:

"Mr. Barton: I judge it is proper for me to say here, on behalf of the Commission, that the Commission had no knowledge whatever as to who was putting up this money.

"Mr. Fitzhugh: I want to assure the Commission that I was satisfied the Secretary of the Commission did not know that. I wanted to bring out the fact.

"Mr. Barton: I will say this—we had an intimation from an outsider who was indirectly interested in the litigation, that Mr. Cissna was going to pay this expense, at least I did. I paid no attention to it, but the Commission knew nothing about it, and the only direct information I got was when Mr. Cissna, at the close of the survey, the last trip I made on the boat, told me that he had agreed to put this money up to bring this thing to a close and not wait on the legislature of Arkansas to meet."

That is the statement you made?

Mr. Barton: Yes.

Mr. Fitzhugh: Mr. Ewing states that for some reason which he did not know I brought out a former connection of Mr. Bailey with

617 Mr. Cissna. The reason I asked the question which the record shows I asked Mr. Bailey before, was that Mr. Ewing had introduced as evidence on the part of the State of Arkansas, the testimony in the printed record (Cissna vs. State of Tennessee) of C. C. Bailey, (page 276), and I desired, first, to show that Mr. C. C. Bailey, whose name appears at the head of the printed testimony, was Mr. C. B. Bailey—I wanted the record to show that; and second, to show what connection, being a witness, he had with the

suit—what connection he had with Mr. Cissna. It was not only competent, but proper, just as Mr. Ewing asked Mr. McSpadden what his connection had been with the land.

Mr. Van Deventer: So far as the joint commission being appointed for the State of Tennessee is concerned, I think I was appointed by Governor Frazier about 1903. I believe one of the members of that Commission appointed by Governor Frazier was Capt. Joplin. If there was a third member I don't recall his name. About all that commission did, on behalf of the State of Tennessee, as I now recall, was to go to Nashville and meet Capt. Joplin there and have a conference with him. Nothing came of it. The State of Arkansas did not appoint its joint commission; if they did they never met, at least I never met with them; and my appointment on this Commission came as a complete surprise. In fact I don't believe I knew at that time the suit was pending in the Supreme Court of the United States. The first time I visited the territory—never having visited it as a member of the joint commission appointed by the State of

Tennessee—was in July, 1918, when I went up there with

618 Mr. Barton. We stayed over night at Mr. Stockley's on Centennial Island and we rode on horse-back behind the levee on the Arkansas side and covered some of this territory. We were gone three days, or two and a half days. Thereafter I went into the military service of the United States, stationed in Washington, and had correspondence with Mr. Barton, Secretary of the Commission, and as I recall I offered to withdraw and give the Chief Justice a chance to appoint another Commissioner, as I didn't know how long I would be in the military service, but he didn't accede to that. I was the one responsible for insisting on these expenses being advanced. I believe the other members of the Commission will agree with me in that matter. I was not willing to proceed as a member of this Commission and have crews put in the field and have to go down in my pocket and advance the expenses of the surveys or the wages of the hands. I had been a member of the legislature of Tennessee and I had been in politics, and I was not willing to wait not only for my compensation, but also for reimbursement, on what some state legislature, either of Tennessee or Arkansas, thought ought to be paid; and I insisted on arrangements being made in advance to cover at least the expenses of the Commission. So far as the matter of compensation to the commissioners was concerned, that was a different matter; but when actual disbursements had to be met I thought the states could afford it better than the Commissioners, and I took that stand to Mr. Barton, and he

wrote me that he was having some difficulty about the matter;

619 but I took the stand, and I thought I was right in taking it,

that the states would have to meet the expenses. Then I was informed that arrangements had been made on the part of both states to meet the expenses, and Mr. Barton and I discussed the form of voucher we would use, and I gave Mr. Barton my views on that, and I believe we were entirely in accord on that, as well as Mr. Bailey, to make the vouchers show on their face the detailed items

covered by each voucher, and to make them in quadruple—one for each of the states, one for the record and one for his file, and that was done; and those vouchers, I believe, will show on their face that they are drawn on the State of Tennessee and the State of Arkansas. Mr. Cissna was not known in the matter any more than we know anything about who is putting up the money for Tennessee. The first I heard, as I now recall, was at the close of our work on the west side of the river as it now runs, when I went to Mr. Stockley's store, about the time we were moving camp from Island 37. This was in the summer of 1920, and Mr. Gathen, I believe that is his name,—think he stayed there at Stockley's store—raised this question of Mr. Cissna putting up the money to pay these vouchers, and I told him, as I have stated here, that we were looking to the State of Tennessee and the State of Arkansas to get this money, and that these expense vouchers were so drawn, and that I didn't know and didn't care where they were getting it; and we were looking no further beyond that fact; and that is all I knew about this matter until Mr. Barton in our correspondence relative to coming here

620 this morning and after I got here told me what this issue was. I know I can state for myself, and I believe the other Commissioners will agree with me that the fact that Mr. Cissna has or has not advanced the money, and whether he expects to get it back, or whether he ever gets it back has cut no ice with this Commission in any shape, form or fashion.

Mr. Ewing: I understood your position, as you have stated it, from Mr. Barton, because I suggested to him that you gentlemen borrow the money, or do something, and he said you wanted the money provided.

Mr. Van Deventer: Mr. Barton suggested that we could borrow it and he expressed himself as willing to go ahead and take chances, but I was not willing to do so.

Mr. Ewing: The commission that you were talking about fell through because the legislature of Arkansas passed an Act similar to the one under which you were first appointed, and the Governor vetoed it.

Mr. Van Deventer: My understanding was that Arkansas declined to proceed on the joint commission. I know nothing came of the joint commission.

Mr. Ewing: There never was a joint commission appointed.

Mr. Fitzhugh: The testimony of Mr. Cissna has been introduced because of information that came from the Attorney General of the State of Tennessee that, (substantially as set out by Mr. Cissna) Mr.

621 Cissna was the real party in interest, however the fact might be as to the employment by the State of Arkansas, and if that was a fact that he was bearing all the expenses, we thought it was proper to go into the record as the basis of any legal steps we might take, and not with a view of reflecting on any one.

Mr. Van Deventer: We understand that.

Mr. Ewing: The purpose I had in view in testifying was to show

exactly my employment, and that it was by the State of Arkansas, under an agreement with which Mr. Cissna had no earthly concern.

Mr. Van Deventer: It seems to me, (and I believe this Commission has gone on the theory) that the Suter line, indicating the thread of the main navigable channel, was substantially the line of 1876, that is, the thread of the main navigable channel fixed by the Supreme Court is substantially the thread in 1876. I expect you gentlemen have read the testimony of the old pilots on that subject. They all seem to agree that was substantially the line. Now that being so, it seems to me, that if we have not laid out the line correctly by the Suter line, before we make our report that ought to be shown. If you admit that—

Mr. Fitzhugh: We don't admit it.

Mr. Van Deventer: If the Suter line is not the line, then we have proceeded on an entirely wrong theory. Now, if we have not laid out the Suter line, I would like to know it before I sign any report; but if we have laid out the Suter line and you gentlemen deny that the Suter's is the line—

622 Mr. Fitzhugh: We deny the accuracy of the Suter map. It don't purport to be made according to instrument.

Mr. Van Deventer: We understand that, but does it show approximately the old thread of the navigable channel of the river?

Mr. Fitzhugh: We contend it does not.

Mr. Van Deventer: It has been shown that Col. Suter, in laying out the river bank and laying out the thread of the main navigable channel, as I recall, went up and down the river four times—made two trips going and coming—then checked up as carefully as anybody could do from that kind of reconnaissance. It seems to me this is the difficulty here before us, in preparing a preliminary report with a view to submitting to you gentlemen, to get it as accurate as possible before we sign it and file it, and that is what I want to know.

Mr. Fitzhugh: I make this suggestion, in accordance with one heretofore made by Mr. Van Deventer, if you have any line already drawn—any tentative line—that you give counsel the benefit of it. I have never seen anything yet, except that indicated by Mr. Bailey, which runs right through the Huddleston and Trigg tract.

Mr. Ewing: I want to make this statement; I think the thing for the Commission to do is, having heard the evidence, examined the property and the maps, to go ahead and lay the line where the Commission thinks it ought to be, without regard to counsel's views.

623 Mr. Fitzhugh: It is supposed you will run it according to the maps and the evidence.

Mr. Van Deventer: If we can have any maps that indicate where the thread of the main navigable channel was, that is the map we ought to work by, rather than by grant line. Now the only map that we have had heretofore that indicated anything of that kind was Col. Suter's map.

The further taking of evidence adjourned to April 15th, 1921.

(Exhibit "A" to deposition of Mr. Caruthers Ewing—being letter addressed to Mr. Guston T. Fitzhugh, dated March 28, 1921—follows and is numbered 623-A.)

623-A EXHIBIT "A" TO DEPOSITION OF CARUTHERS EWING.

March 28, 1918.

Mr. Guston T. Fitzhugh, Memphis, Tenn.

DEAR GUS: I am getting ready to write the decree to submit to you in Arkansas vs. Tennessee.

We will name C. B. Bailey as one of the Commissioners.

I take it you will name some man familiar with conditions.

I enclose you a letter from H. H. Barker, suggesting a Mr. Chas. A. Barton, whom I do not know, but he suits me as a third man. I think I met Mr. Barton, but would not know him if I were to see him. I asked Mr. Bolton Smith about him and he replied: "I can't recommend him too highly."

All I am after is getting the Commissioners named if we can agree on them and if Barton doesn't suit you (and I do not care one way or the other about him), I wish you would give me the name of one or two men that you want as a third man because I am agreeable to most anybody.

I have been up in that territory and I know enough about the lines and the topographical conditions to know about where the line will be run anyway. Yours, etc. — — — CE/AH.

624 The deposition of C. J. Bentley, introduced as evidence on behalf of the State of Tennessee, said deposition having been taken November 15th, 1904, in the case H. W. Stockley vs. W. A. Cissna, in the Chancery Court of Tipton County, Tennessee, and is as follows:

Deposition of C. J. Bentley, Witness for Complt.

Taken up (?) notice before A. W. Person, notary public, at Memphis, Tenn., Nov. 15, 1904, in the presence of G. J. McSpadden, sol. for complt. and of H. C. Williamson, sol. for defts.

Filed Dec. 5, 1904.

Direct examination by Mr. McSpadden:

Q. State your name and profession, Mr. Bentley.

A. Charles James Bentley; profession, architect, mechanical draftsman & mapman.

Q. How long have you practiced the profession of map-making and that of draftsman?

A. Thirty-four years.

Q. I hand you a map, Mr. Bentley, which purports to be a map of the Mississippi River Commission in 1891, showing the river in the vicinity of Dean's Island, Arkansas, and Centennial Island,

Tennessee. It is sheet No. 7. It has on it some additional drawings besides those that are published. I will ask you if you know who put them there?

625 A. I put them there.

Q. What is this drawing that you have made on the map as published by the Mississippi River Commission?

A. It is a reduction from Major Humphrey's survey.

Q. Major Humphreys' survey of that originally.

A. Yes sir.

Q. You have called it a reduction; what do you mean by that?

A. A reduction means that Major Humphreys' plats were thirty chains to the inch and I reducted it to eighty chains to the inch.

Q. Upon what scale is the Mississippi River Commission's original map drawn?

A. Eighty chains to the inch.

Q. Then, as I understand you, you reduced Major Humphreys' map to eighty chains to the inch?

A. Yes sir.

Q. Then what did you do with it after you reduced it?

A. I placed it upon the printed map of the Mississippi River, published by the Mississippi River Commission.

Q. I will ask you to point out the starting point, or a common point that you took.

A. (Witness indicates on the map.)

Q. Well, what point is that; what Island?

A. That is Island 37.

Q. Now take the direction north, east, south or west and say what point it is.

626 A. It is northwest.

Q. You have got that backwards, isn't it?

A. That is south (indicating).

Q. I am talking about the map.

A. This is north (indicating).

Q. Well, now look at it again.

A. It is northeast.

Q. Now look at it again, Mr. Bentley.

A. I have got mixed on account of the building.

Q. Well, arrange this so that you can get your points right.

A. This is the north; this is east, and now this is the west (indicating).

Q. You are talking about Island 37?

A. Yes sir.

Q. Now look at it and say what part of Island 37 it is that you took for the starting point.

A. It is east.

Q. I mean as to Island 37. I will ask you directly if it is not the southeast corner of Island 37 you are pointing to there on the map?

A. Yes sir, I got mixed.

Q. Now look at it carefully. Are you certain it is the southeast corner of Island 37 that you assumed as the common point from which you drew that map?

A. Well, that is more; I will say, south.

627 Q. There is the place you pointed out (indicating on map); there is Island 37; now what corner of Island 37 is that?

A. This is the south corner.

Q. South what?

A. Southeast corner.

Q. The southeast corner. You are certain, then, you used that point on 37 as the common point of the two maps?

A. Yes, sir.

Q. I will ask you to state whether you drew this map with your best skill and care?

A. With my very best skill and care.

Q. Do you consider it a carefully and accurately — drawing that you placed upon it?

A. I do.

Q. I will ask you to file that map, sheet No. 7 of the Mississippi River Commission map, on which you made the reduced drawing of Major Humphreys' map, as Exhibit A to this your deposition, and to make it a part thereof. Will you do that?

A. Yes sir.

Q. I hand you another map, and will ask you what that is, if you know.

A. This is a true copy of Map No. 7, reduced from a reconnaissance survey, made under the direction of Major Charles R. Suter, corps of Engineers, U. S. Army in 1874.

Q. I will ask you what additional drawing, if any, has 628 been placed upon that map and if any, by whom?

A. The same is what was put on the plat of the River Commission's map, and placed by me on it.

Q. Then, as I understand you, you have placed upon that map, which you hold in your hand, the map of Major Suter's reconnaissance survey, the reduced map of Major Humphreys?

A. Yes sir.

Q. Well, did you reduce Maj. Humphreys map to the same scale in which that map is drawn there?

A. Exactly.

Q. I hand you a certified blue print of sheet No. 7 of the reconnaissance survey of the Mississippi River below Cairo, showing the river from near the head of Island 35 to the foot of Brandywine Island of the reconnaissance map of the Mississippi River from Cairo, Ill., to New Orleans, Louisiana, made in accordance with the Act of Congress approved June 3, 1874, by Major Charles R. Suter, Corps of Engineers, of the United States Army, and A. H. Blaisdell, assistant, in charge of reconnaissance, published in Washington, D. C., and I will ask you if the map which you hold in your hand is an exact copy of this blue print, the tracing of which you hold in your hand.

A. In other words, to reverse the thing, the blue print is an exact copy of the tracing.

Q. The blue print is an exact copy of the tracing.

A. Yes sir.

Q. Do you mean to say that you made that blue print?
629 A. No, I did not make that blue print.

Q. Have you compared the blue print with the tracing?

A. I have.

Q. Is the tracing an exact reproduction of the blue print, with the exception of the reduced Humphreys map?

A. Yes sir.

Q. Did you make that comparison carefully?

A. Yes sir.

Q. I believe you stated that you had drawn the Humphreys map on that.

A. Yes sir.

Q. Was that drawn with your best care and skill?

A. Yes sir.

Q. Was the Humphreys map reduced to the same scale of that map with your best care and skill?

A. Yes sir.

Q. Now point out there the common point of the two maps, which you took to draw the Humphreys map upon the tracing of Major Suter's reconnaissance map.

A. It is exactly the same as the other; the same point.

Q. The southeast point of Island 37?

A. Yes sir, of Island 37.

Q. Has that drawing you placed upon that blue print of Major Suter's map, been put there with your best care and skill?

A. Not the blue print.

Q. I mean tracing instead of blue print.

630 A. Yes sir.

Q. They have been reduced to the same scale.

A. Yes sir.

Q. That scale, I believe you stated, is eighty chains to the inch.

A. Yes sir.

Q. Will you mark that tracing of Major Suter's reconnaissance map, upon which you have drawn the reduced scale of Major Humphreys map, Exhibit B, and make it a part of this, your deposition?

A. Yes sir.

Cross examination reserved.

Mr. McSpadden: Just note that the reservation is without agreement, though.

And further deponent saith not. C. J. Bentley.

Subscribed & sworn to before me this the 25th day of November, 1904. Alva W. Person, Notary Public. (Notary Seal.)

(Copied from Stockley vs. Cissna.)
(In Chancery Court of Tipton Co., Tenn.)

631 Mr. Fitzhugh introduced as evidence, on behalf of the State of Tennessee, the deposition of Lottie C. Burke, said deposition having been taken Nov. 15, 1904, in the case of H. W. Stockley vs. W. A. Cissna, in the Chancery Court of Tipton County, Tennessee, and is as follows:

Deposition of Lottie C. Burke, Witness for Complt.

Taken before A. W. Person, notary public, at Memphis, Tenn., Nov. 15, 1904, upon notice, and in the presence of G. J. McSpadden, sol. for Complt., and of H. C. Williamson, sol. for Defts.

Filed Dec. 8, 1904.

Direct examination by Mr. McSpadden:

Q. Will you please state your name?

A. Lottie Celine Burke.

Q. What relation, if any, are you to Mr. C. C. Burke?

A. He is my father.

Q. Is he now living or dead?

A. No sir, he has been dead for three years.

Q. What was his profession?

A. Civil Engineer and architect.

Q. Where did he practice that profession?

A. Well, during the latter years of his life in Memphis.

Q. About when did he come to Memphis, do you know?

A. I can't be sure, but I think it was in 1849. I can't be sure it was then.

632 Q. What were his initials?

A. C. C. Burke.

Q. I will ask you if he left—state whether or not he left any records of the surveys that he made, books containing field notes, books containing plats or any other memoranda of work that he did.

A. Yes sir; he left a complete record of both plats he made and field notes made by himself.

Q. State whether or not those are contained in books that are regularly marked for each year and form a regular, complete and comprehensive series of the work that he did.

A. The field notes are in series, some books contain more than one year, but there are others just for one year. One book contains his remarks. Series 4, 5, 6 and 7 contain several years. I suppose it depended on whether he did much of that sort of work during that time.

Q. Are those books in the handwriting of your father?

A. Yes sir; they are in his handwriting.

Q. Please state what plat books, if any, he left.

A. I don't know just how many, but several plat books, extending back into the early history of Memphis, when the first grants were given by the Spanish.

Q. And extending down to how far?

A. Well, I don't know; to the period of his death, I presume, because he didn't stop making surveys until he was in such bad health he was obliged to.

633 Q. Will you state whether or not these memoranda were kept in well-bound books, or whether they were just loose or disorderly memoranda?

A. They were kept in well-bound books, all listed.

Q. State whether or not they are indexed.

A. Yes, they are indexed. All the plat books are not indexed that I know of. There is a general list of them; at least the field notes are. The plat books are indexed. You see there are some of those that are indexed; other, there is just one little list of the field notes. You will have to look for that.

Q. Do you know whether or not he intended those books to contain a permanent record of his work?

A. I do.

Q. State whether or not you have heard him so express himself.

A. I did; on various occasions. He received several offers for these books, to purchase these books to make a permanent record of lands around and in Memphis.

Q. In whose keeping are those books now?

A. In my own keeping.

Q. State whether or not any of those books contain any record of any survey made of the Trigg tract in Tipton County, in 1869.

A. I thought it was 1868—the date of the survey.

Q. Yes, that is it, 1868.

A. Yes, sir; there is a book that contains a record of the survey and also two papers.

634 Q. Where were those papers found?

A. In this book with my father's papers.

Q. Of what nature was that book, was it a plat book, or a field note book?

A. It contained plats and field notes.

Q. What sort of a book was it; about how many pages would you estimate?

A. I presume about two hundred pages. I really could not answer that accurately.

Q. State whether or not it was a substantial, well-bound volume.

A. It was.

Q. About what was the size of it?

A. It is about fourteen inches long, I suppose, by six or eight inches wide, and probably an inch in thickness.

Q. Was it such a book as he usually recorded his plats in that he kept?

A. No, it was not. It was not as large. Several of the other books contain three hundred and five hundred pages.

Q. This is just a smaller book?

A. A smaller book.

Q. But it is, is it not, a permanent record?

A. It is.

Q. Now, you state that two other papers were found in there.

A. Yes sir.

Q. State in whose handwriting those papers were.

635 A. In my father's handwriting.

Q. Did they relate to the Trigg survey?

A. They were exact copies of the copy in the book. A part of them were made—one of them on the ground. I think this one that I hold in my hand was made on the ground; that is in indelible pencil. He had no ink; that is the reason I think it was made right there on the scene of the survey, and the other I think, was made later, when he had ink to make it with.

Q. I pass you a plat and the field notes therein marked Exhibit B to J. H. Humphrey's deposition. In whose handwriting is that survey?

A. In my father's handwriting.

Q. Will you state whether or not you are familiar with your father's handwriting?

A. I am, I have assisted a great deal in his office work, and for that reason, if no other reason.

Q. State whether or not, in your opinion that plat was drawn by your father.

A. It certainly was.

Q. State whether or not the field notes on that plat are in his handwriting?

A. They are; there is no question about that.

Q. State whether or not this paper, which is an Exhibit B to J. H. Humphrey's deposition, is a perfect copy of the record contained in the book.

A. The plat is a perfect copy. The field notes in the book are a little more elaborate.

636 Q. In what way are the field notes in the book more elaborate?

A. It goes into detail a little bit more, Mr. McSpadden. I don't know whether I am enough of a surveyor to tell you just how. This description that is contained in the book—this description here is not found on that, is it?

Q. No, madam, that is true. I see what you mean. I will ask you if you have prepared a copy of the entries and plat in the book.

A. I have.

Q. Will you please make it Exhibit A and make it a part of your deposition?

A. I will.

Q. Is this Exhibit A to your deposition a true copy of the plat found in the book?

A. It is identical in every respect.

Q. Are the notes—field notes—identical with those found in the book?

A. They are.

Q. I will ask you if this Exhibit A to your deposition—whether or not it is also a copy of the other paper found in the book, which you now hold in your hand?

A. It is.

Q. In every respect a copy?

A. I think it is identical in every respect. It has the description and it has the field notes here.

Q. Where did you say you found those two papers, one of 637 which is Exhibit D to J. H. Humphreys' deposition?

A. I found this one in the same page of the plat book that the plat was found, and the other in front of the book. They had evidently been used by my father in the book.

Q. State whether or not these records your father left were carefully preserved by him during his lifetime.

A. They were. He considered them valuable property.

Q. He considered them valuable property?

A. Yes sir.

Q. State whether or not they have been carefully preserved by you since his death.

A. They have.

And further deponent saith not. Lottie C. Burke.

Sworn to and subscribed before me this the 26th day of November, 1904. Alva W. Person, Notary Public. (Notarial Seal.)

(Copied from Stockley vs. Cissna.)

(Chancery Court of Tipton Co., Tenn.)

638 EXHIBIT "A" TO DEPOSITION OF LOTTIE C. BURKE.

March, 1868.

W. W. Trigg's Plantation on Miss. River 25 Miles Above Memphis.

Commencing at stake 34 lks. N. 23 W. of a black walnut tree marked (B), the dividing corner of Walt and Trigg; thence runs S. 84 degrees W. 111 chs. 17 lks. to blazed tree on line between Trigg and Stockley; thence N. 6 degrees W. to bank of Miss. River; thence along meanderings of sd. river to a point N. 6 degrees W. 23 chs. 35 lks. of starting point, containing upwards of 937.21 acres.

Field-notes of Survey of 2d Tract, Made March, 1868.

Magnetic Bearings, Variation 6 Degrees East.

	Chs.	Lks.
S. 84 degrees W.	111	17
N. 6 degrees W.	120	..
N. 84 degrees E.	38	50
S. 46 degrees E.	9	50
S. 31 degrees E.	13	50
S. 28 degrees E.	12	..
S. 30 degrees E.	14	50
S. 41 degrees E.	17	34
S. 50 degrees E.	8	18
S. 45 degrees E.	6	75
S. 81 degrees E.	6	..
S. 54 degrees E.	2	..
S. 56½ degrees E.	7	50
S. 41 degrees E.	2	50
S. 47 degrees E.	26	40
S. 6 degrees E.	23	35

By W. S. Moore, for Hood & Moore.

The balance of this exhibit is a tissue map, which is sent up with the other maps & charts.

(Copied from Stockley vs. Cissna.)

639 The deposition of David Dean, introduced by Mr. Fitzhugh, as evidence on behalf of the State of Tennessee, said deposition having been copied from the Record in the case of Stockley vs. Cissna, and is as follows:

Notice to take deposition of David Dean Nov. 17, 1904, served on Defendant's counsel, on behalf of Compl. Nov. 9, 1904, by F. E. Miller, deputy sheriff of Shelby County, Tenn.

Deposition of David Dean, Witness for Compl.

Taken at Corona, Tenn., on notice, November 17, 1904, before C. L. Montague, Notary Public, and in the presence of compl. and his counsel, G. J. McSpadden.

Filed Dec. 8, 1904.

Q. 1. State your name, age, place of residence and occupation.

A. David H. Deane, age 58 years; Bassett, Ark.; farmer by occupation.

Q. 2. State whether or not you have ever lived on Dean's Island, Arkansas; if so, state how long and during what years.

A. Yes, I have lived on Dean's Island. I have lived there 32 years,

beginning in 1847 and ending 1879. I was born there and the island was named for my father.

Q. 3. State whether or not you were acquainted with Dean's 640 Island its banks and boundaries and the Mississippi River around it as it was in 1876.

A. Yes.

Q. 4. Have you been there recently; if so, state when, and whether or not you examined the island and the land that has been made in the old bed of the river, carefully.

A. Yes, I have been there in the last two or three months several times. I have examined it very carefully. I went there for that purpose, in order to locate the river bank as it was in 1876.

Q. 5. State whether or not you were able to locate it satisfactorily to yourself, so as to lead you to think you had done it accurately.

A. Yes, I was able to locate it accurately as could be.

Q. 6. State whether or not you have ever pointed out the river bank of Dean's Island, as you remember it to have been in 1876, to any surveyor at the request of H. W. Stockley; if so, when was it, and what was the surveyor's name.

A. Yes, I pointed it out to Major J. H. Humphreys about 2 weeks ago.

Q. 7. State whether or not Major Humphreys ran the line as you pointed it out to him.

A. Yes, he ran it as I pointed it out to him.

Q. 8. I hand you a blue print of a map made by Major Humphreys and ask you to state which line thereon represents the river bank of 641 Dean's Island in 1876, if any line thereon does.

A. I think line which runs through what is marked Middle Pond correctly represents the bank of Dean's Island at a medium stage of the river.

Q. 9. Will you trace that line in red ink on the blue print and mark it "River bank of Dean's Island" at medium stage of the river in 1876?

A. I have done so in red ink.

Q. 10. Will you please mark that blue print Exhibit A, and make it a part of this your deposition?

A. I do so.

Q. 11. There is a line on that blue print, that you have marked Exhibit A to this your deposition, marked supposed low water line in 1876. State whether or not that line accurately shows the Dean's Island bank in 1876, at a medium stage of the river.

A. It does not show the bank at a medium stage of the river. The line I marked in red ink shows the bank at a medium stage of the river. The line marked supposed low water line of 1876 shows the water line at an extreme low stage of the river.

Q. 12. I hand you a map marked "survey of the Mississippi River made under the direction of the Mississippi River Commission, Chart No. 18. Will you state whether or not that correctly represents the country as it was about the year 1884?

A. Yes, that is the most correct map, to my idea, that I have seen.

Q. 13. Will you mark the river bank of Dean's Island, at 642 a medium stage of the river in 1876, just before the cut-off, on that chart No. 18, in red ink?

A. I have done so.

Q. 14. Will you please mark that map Exhibit B, and make it a part of this your deposition?

A. Yes.

Q. 15. What is your estimate of the width of the Mississippi River east of Island 37, as it was at a medium stage, before the cut-off in 1876?

A. My estimate would be from a mile and a quarter to mile and a half.

Q. 16. What is your estimate of the width of the Mississippi River between Trigg's and Dean's Island, as it was at a medium stage, before the cut-off in 1876?

A. About the same; about a mile and — quarter to a mile and a half.

Q. 17. State whether or not there were any sand bars to the south and west of Dean's Island and joining on to it before the cut-off in 1876.

A. Yes, there was a large sand bar.

Q. 18. Describe that bar, as to its appearance, vegetation on it and other characteristics, as it was just before the cut-off in 1876.

A. Just a dry, barren sand bar, nothing but sand; there was no vegetation on it.

Q. 19. How wide was that dry, barren sand bar along 643 Dean's Island shore in the direction of Trigg's on the Tennessee side?

A. About three quarters of a mile.

Q. 20. Describe the bar at a point opposite Island 37, as to its appearance, vegetation and other characteristics, as it was just before the cut-off in 1876.

A. The bar in front of Island 37 was nothing, only a mud bar with a small willow growth on it.

Q. 21. About what point did the sand bar end and the mud bar begin?

A. Just about the head of Island 37.

Q. 22. How wide was the mud bar down there opposite Island 37?

A. I will say about 300 yards—just begun to make before the cut-off.

Q. 23. At what stage of the river would the mud bar and sand bar, of which you have spoken be covered by water?

A. At about a two-thirds stage; one third below high water and two thirds above low water.

Q. 24. Where were you living during the year 1876?

A. On Frenchman's Bayou. I lived there one year. All the rest of the time I lived on Dean's Island, as I stated above.

Q. 25. State what changes, if any, have taken place in Barnay's chute, to the north of Dean's Island, since you have known it.

A. It has grown from a small stream of about 75 yards wide to about 200 or 250 yards wide by caving.

And further deponent saith not. David H. Deane.

644 The foregoing deposition of David H. Deane was taken before me, C. L. Montague, a notary public in and for Tipton County, Tennessee, as stated in the caption, and reduced to writing by me. And I certify that I am not interested in the cause, nor of kin or counsel to either of the parties; and that I sealed it up and put it in the post office at Corona, Tennessee, without being out of my possession or altered after it was taken.

Given under my hand and notarial seal on this the 17th day of November, 1904. C. L. Montague, Notary Public in and for Tipton Co., Tenn. (Notarial Seal.)

(Above deposition of David H. Deane copied from Stockley vs. Cissna.)

(Chancery Court of Tipton County, Tenn.)

645 The further taking of evidence before the Arkansas-Tennessee Boundary Commission was resumed April 15th, 1921, there being present G. T. Fitzhugh, counsel for the State of Tennessee, and Commissioners Chas. A. Barton, C. B. Bailey and Horace Van Deventer.

The first witness, Miss LOTTIE C. BURKE, introduced on behalf of the State of Tennessee, after being first duly sworn, testified, as follows:

Direct examination.

By Mr. Fitzhugh:

Q. Please state your name.

A. Lottie C. Burke.

Q. Miss Burke, are you the daughter of Mr. C. C. Burke?

A. I am.

Q. Was he a Civil Engineer?

A. Yes, sir.

Q. What other position did your father hold?

A. He was County Surveyor for a number of years and he was City Engineer for a number of years, and he was Civil Engineer and Architect.

Q. He was Surveyor of the County of Shelby for a number of years?

A. He was.

Q. Will you please state what time your father died?

646 A. September, 1901.

Q. What was his age at that time?

A. Eighty-six.

Q. Do you personally know that your father had in his possession data, records and maps showing that he had surveyed lands in Tipton County, in the neighborhood of Island 37 and Centennial cut-off?

A. I do.

Q. Did you assist your father in the keeping of his records in his late years?

A. Sometimes, as clerk only.

Q. Do you mind stating your age, Miss Burke?

A. Certainly not. I was born in 1867; I am fifty-three years old.

Q. Miss Burke, I hand you what purports to be an original map, which has on it "Surveyed the Trigg land Oct. 23rd, 24th and 25th, 1877," and under it "C. C. Burke, Civ. Engr. & S."; then in red ink, at the bottom of it, "The red line denotes the out boundary of the Trigg land as per survey made in March, 1868." This map accompanies an original report made by C. C. Burke, C. E. & S., and filed in the case of T. A. Nelson vs. M. L. Trigg, Oct. 29th, 1877. I will ask you to state, first, whether the writing which I have read to you as from the map is in the handwriting of your father, C. C. Burke?

A. It is.

Q. Is that his genuine signature on that map?

A. It is.

Q. Is the writing in red his writing?

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A. It is.

Q. Were you familiar with his manner of getting up maps?

A. More or less.

Q. Will you please state whether the report accompanying this plat and map is entirely in the handwriting and signed by your father?

A. It is.

Mr. Fitzhugh: I want to offer this in evidence as Exhibit No. 1 to the testimony of Miss Lottie C. Burke, and in doing so will state to the Commission that this map was found, after I had gotten every clerk in the Chancery Court Clerk's office, to make a search for it for weeks,—was found in the basement of this Court House, and it is a map which has not been heretofore used in any of these cases, that I know of.

Q. Miss Burke, there is on this map, Exhibit No. 1 to your deposition, in red ink, the statement that the red line shows the out boundary of the Trigg tract, as surveyed by your father in 1868. I will ask you whether you think, by searching among the data, maps and records of your father, which are now in your possession, you can locate the survey of 1868 of the Trigg tract?

A. I think so.

Q. Do you think you could locate it so you could present it to this Commission here by Monday?

A. I feel pretty certain I can. I have two boxes of old papers.

Q. Will you endeavor to do so?

A. I will.

Further deponent saith not.

648 The next witness, J. A. GREEN, introduced on behalf of the State of Tennessee, after being duly sworn, deposed as follows:

Direct examination.

By Mr. Fitzhugh:

Q. Please state your name and where you live.

A. J. A. Green; Covington, Tennessee.

Q. That is in Tipton County, isn't it?

A. Yes, sir.

Q. State your age.

A. Sixty-eight.

Q. Mr. Green, what is your business?

A. Abstractor and surveyor.

Q. How long have you been a surveyor?

A. Forty-four years.

Q. I will ask you whether you had occasion to make a number of surveys of Island 37 and whether you are familiar with that territory, what is known as the Huddleston grant and the Trigg tract, which is a part of the Huddleston grant.

A. Yes, sir.

Q. How often have you been in that territory?

A. A great many times, I could not say how many times.

Q. You have made a number of surveys there?

A. Yes sir.

Q. Have you, at my instance and request prepared a map 649 with the latitude and longitude indicated thereon, so as to show the latitude and longitude of the Trigg tract of land, assuming that the latitude and longitude of Chart 18, which is the map of 1883-1884 furnished me by the Commission, on which there appears the tentative boundary line which has been surveyed by the Commission—have you done that?

A. Yes, sir.

Q. I hand you this chart, the Mississippi River Survey Chart 18, and ask you to make that Exhibit No. 1 to your testimony.

A. I do so.

Q. Now, is that the map which I presented to you and told you had been furnished me by the Commission and that the red line on this map is what is known as the tentative line adopted by the Commission purporting to show the middle of the channel of the Mississippi River just prior to the cut-off in 1876?

A. It is the same map.

Q. From your knowledge of the number of changes in the Trigg tract and your knowledge of the boundaries of that tract, have you indicated the east and southern boundary line of the Trigg tract on that map?

A. I have.

Q. Is that in pencil mark?

A. Yes, sir, in pencil mark.

Q. Now, I will ask you whether the map which I now hand you is a map that was made by you from a map used in the case of

650 State vs. W. A. Cissna, if that is made from the Humphreys map—did you make that map?

A. Yes, I made this map; that is a copy of the original.

Mr. Barton: Is that a copy of the Humphreys map, or the original?

A. That is a map I made, which is on a little different scale from the Humphreys map; it was copied from the Humphreys map, but on a different scale.

Q. Have you indicated on this the latitude and longitude?

A. Yes.

Q. Is the eastern and southern boundary of the Trigg tract shown on this map, and if so tell where it is located with reference to the longitude, between what?

A. The east line is between 90 degrees, 3 minutes, and 90 degrees, 4 minutes.

Q. The east line is almost midway between 90 degrees, 3 minutes, and 90 degrees, 4 minutes?

A. Yes, sir.

Q. Where is the tentative boundary submitted by the Commission on Chart 18; where is the longitude?

A. That is between 90 degrees, 4 minutes, and 90 degrees, 5 minutes.

Q. This tentative boundary line on Chart 18 runs through the main portion of the Trigg tract?

A. Yes, sir.

Q. And the eastern boundary line is considerably east of 651 this tentative boundary?

A. Yes, sir.

Q. You are an old resident of Tipton County?

A. Yes, sir, I — been there quite a little while.

Q. And you have surveyed this portion of Tipton County in the territory of Island 37, many times you say. I will ask you whether it is or is not a fact that it was a matter of common knowledge and a part of the history of Tipton County, that the Trigg tract—the John Trigg tract—just before the cut-off, consisted of some 1,300 acres of land, and that the change made by the cut-off in the Mississippi River took away 1,000 acres of that Trigg tract?

A. Yes, sir.

Q. You have seen the Burke survey, have you not?

A. Yes.

Q. That shows the cut-off went right through the Trigg tract and left toward the southeast corner of the tract about 33 or 34 acres?

A. Yes, sir.

Q. And over on the Centennial Island side, about a mile apart, 305 acres of this Trigg tract?

A. Yes.

Q. Between the two pieces the cut-off took away 1,000 acres?

A. Yes sir.

Q. According to this Chart 18, I will ask you to state whether it is a fact or is not a fact that the channel of commerce of

652 the river, which is supposed to be indicated by that red line as it existed prior to 1876, is actually made to run over land which was actually there and in cultivation at the time of the cut-off?

A. Yes sir.

Q. The longitude and latitude lines on your map there are on a different scale from the ones on Chart 18?

A. Yes.

Q. Mr. Green, did you make or not make a survey for Mr. Cissna—W. A. Cissna—the gentleman who testified that this suit was largely in his interest—did you make a survey of this property here?

A. Yes sir, W. A. Cissna.

Q. Have you the rough sketch showing the north east corner of the Trigg tract and the bank of 1876, according to the information which was given you by Mr. Cissna at the time the survey was made?

A. Yes sir.

Q. I will ask you to state whether this rough draft indicates where this bank is, and if so how far from the north east corner of the Trigg tract is the bank as you surveyed, according to the survey you made, based on information which you received from Mr. Cissna?

A. I noted in my survey for Mr. Cissna that the bank of 1876 was 7 2/100 chains northeast of the northeast corner of the Huddleston grant.

Q. Is that the original northeast corner?

653 A. It is, as located by Maj. Humphreys.

Q. You have got the original of this?

A. Yes, I have my original survey.

Q. I will ask you to file this as Exhibit 2 to your testimony, this map, which is certified to be a copy—certified by the Clerk and Master—showing the survey by J. A. Green, November, 1909.

A. I do so.

Q. Prior to the cut-off do you know that considerable accretions had been made along this northeast portion of this tract?

A. No sir, I don't know anything about before the cut-off.

Q. On this map what does this green line running from this line right along here, indicate?

A. That is a wire fence.

Q. The line to which I refer is the line running approximately from the northeast corner of this Trigg tract, is it not?

A. Yes, sir.

Q. Up north westerly, across McKenzie chute and through the tract of 152 1/2 acres?

A. Yes.

Q. When was the first time that you visited this territory after the cut-off?

A. I don't remember exactly, but it was somewhere in the eighties, I think.

Q. I will ask you whether, even as far back as in the eighties,

any surveyor could, with reasonable certainty, have located
654 the middle of the channel of commerce of the river as it
existed prior to 1876?

A. No, sir.

Q. It has changed possibly every year since?

A. Yes, sir.

Q. The channel of commerce changes even according to the seasons of the year—I mean the width of the river changes?

A. Yes.

Q. But apart from that, I will ask you whether in your judgment, from your knowledge as a surveyor, it is now possible to locate, with any reasonable degree of accuracy, the middle of the channel of commerce of the Mississippi River in this territory, as it was just prior to the cut-off in 1876?

A. No, sir.

Mr. Fitzhugh: On page 123 of the printed record in the case of Cissna vs. State of Tennessee, I have instructed the stenographer to copy, in accordance with our agreement, a decree made in the case of Nelson vs. Trigg, which recites:

"On the 4th day of December, 1879, before the Honorable W. W. McDowell, Chancellor presiding, it appears from the report of the Master filed herein on July 10th, 1879, that Sledge, McKay & Co., a mercantile partnership, purchased the two tracts of land in Tipton County, State of Tennessee, one containing 33.75 acres and the other 305.75 acres, belonging to the estate of John Trigg, deceased, sold under the former decrees of this court herein described as follows: (6) Portions of a certain tract of about 1,300 acres of land situated in Tipton County, Tenn., which has been surveyed
655 by C. C. Burke, who reports that the Centennial cut-off has placed nearly 1,000 acres under the X of the Mississippi River and which is in Range 9, Sec. 5 on said river, the said cut-off leaving 33.75 acres on the main land and 305.75 acres on the island. (a) The tract containing 33.75 acres begins at a stake on the bank of the Mississippi River, thence down said river with its meanders north 75 degrees west 16 chains, north 76½ degrees west 32 chains, south 50½ degrees west 3 chains and 8 links, south 43 degrees, west 11 chains 50 links, thence east 56 chains and 80 links to the point of beginning, all open land &c.

(B) The tract containing 305.75 acres begins at a stake on the bank of the Mississippi River on Centennial cut-off at the dividing line between C. A. Stockley's and John Trigg's land, thence north 97 chains 14 links to a small cottonwood marked T. on the bank of old river, thence up old river south 71 degrees, east 11 chains south 50 degrees east 13 chains, south 40½ degrees east 12 chains, south 22 degrees east 17 chains, south 10 degrees east 7 chains and 60 links, south 9 degrees east 9 chains, south 18½ degrees east 9 chains, south 7 degrees east 2 chains, south 12 degrees east 6 chains and 44 links, south 30 degrees east 6 chains, south 7½ degrees west 6 chains and south 28½ degrees east 5 chains and 28 links, south 3 degrees east 5 chains and 30 links to the point of entrance on

Centennial cut-off, thence down said cut-off north 86 $\frac{3}{4}$ degrees west 8 chains, south 83 degrees west 8 chains, north 85 degrees west 9 chains, south 84 $\frac{3}{4}$ degrees west 11 chains and 60 links, south 69 degrees west 5 chains and 13 links, south 69 $\frac{1}{2}$ degrees, west 9 chains and 30 links to the point of beginning, of which there is 175 acres open land and in cultivation, with 8 tenants' houses, fencing moderately good &c. Has complied with the terms of the sale by the payment of the purchase to the Master. It is ordered and decreed that all the right, title and interest of the parties to this suit in said tracts of land be and the same is hereby divested out of them and vested in the said partnership of Sledge, McKay & Co. The Master will furnish a certified copy of this decree for registration to said partnership on the payment of the fee therefor."

656 Mr. Van Deventer: I notice the Burke map puts Island 37 east of Centennial—the one filed as an exhibit to Miss Burke's deposition. Where is Island 37 with reference to Centennial, east or north?

A. North.

Q. That Burke map is not correct in indicating that the tract of land east of Centennial is Island 37?

A. No. He has Island 37 north of the 33 acres.

Q. North of what?

A. North of the 33 acre tract and east of the 305 acres.

Mr. Barton: What is the land he has marked Island 37; is it Island 37? If not, what is it?

Mr. Van Deventer: Is that Island 37 or Dean's Island?

A. Really it is more like Dean's Island. It is not in the right place for either one. 37 ought to be a little west and Dean's a little east.

Mr. Van Deventer: The tract at the top of the Burke map, is really Island 37?

A. Yes, sir.

Mr. Van Deventer: And the one called Island 37 is in the general direction of Dean's Island?

A. Yes, sir.

Mr. Van Deventer: The map is incorrect to that extent?

A. Yes, sir.

657 Mr. Van Deventer: In laying off the latitude and longitude on the map which you filed, marked copy of Exhibit 10 in the case of State vs. W. A. Cissna, et. al., in the Chancery Court of Tipton, County, Tenn., do these fine red lines indicate the latitude and longitude?

A. Yes, sir.

By Mr. Van Deventer:

Q. What did you take as your starting point to lay off the latitude and longitude on this map?

A. Corona Landing.

Q. Corona is a variable point, is it not, a fixed point, it changes

from year to year? Did you take any fixed point like Mrs. Smith's house?

A. No, I took the point marked Corona Landing on Chart 18.

Q. When was this Humphreys map made of which this is a copy?

A. I made his in 1909. I don't remember the date of the Humphreys map.

Q. Can you locate Mrs. Smith's house on this map, Chart 18?

A. No sir.

By Mr. Fitzhugh:

Q. Mr. Green, I will ask you about Corona, on Chart 18, is it a fixed point whose latitude and longitude is established by that map?

A. Yes, sir.

Q. Now the boundaries of the Trigg tract and the location of Corona to the Trigg tract, on Chart 18,—you have correctly 658 placed the eastern boundary of the Trigg tract on Chart 18?

A. Yes, sir.

Q. And shows what is the latitude and longitude on that map with reference to the fixed point on that Chart 18 known as Corona Landing?

A. Yes, sir.

Q. You are familiar with the Burke survey?

A. Yes, sir.

Q. Is it not a fact that the eastern boundary of the Trigg tract as shown on the Burke map is considerably east of the Commission's tentative boundary line on Chart 18?

A. Yes sir.

And further deponent saith not.

659 Mr. G. J. McSPADDEN, a witness heretofore introduced on behalf of the State of Tennessee, being recalled, testified as follows:

Direct examination.

By Mr. Fitzhugh:

Q. Since you last testified here the Commission has handed me Chart 18 of the Mississippi River Commission, on which is indicated by red line, and little red circles, the tentative boundary line suggested by the Arkansas-Tennessee Boundary Commission as being the middle of the channel of commerce of the river just prior to the cut-off. I will ask you, if, after examining that, with your knowledge of the territory and the situation, whether there is any doubt about that tentative line going across the Trigg tract that was in cultivation prior to the cut-off.

A. There is not the slightest doubt in the world but what that red line is located about the middle of the Trigg plantation as it was before the cut-off. You will notice the red dot on the Tennessee main shore on Chart 18 is only a very little distance from the east

bank of the river or the main shore as it was just prior to the cut-off; in other words Chart 18, it seems to me, shows that that red line is a mistake, and it is in contradiction to the showing of the government survey set forth by Chart 18.

Mr. Barton: Mr. Fitzhugh, you are trying to prove by general reputation a point on which you have offered specific evidence to the contrary.

660 Mr. Fitzhugh: What is that?

Mr. Barton: You are trying to prove that the Trigg tract just before the cut-off contained over 1,300 acres, when you have just offered the Burke map showing that as early as 1868 it contained only 934 acres, and all the testimony shows that the bank continued caving from that time until the cut-off occurred.

Mr. Fitzhugh: That was another Trigg tract.

Mr. McSpadden: Yes, that was another tract.

Mr. Barton: I beg your pardon. This is the Trigg tract through which the cut-off went, as the map shows.

Q. Irrespective of this line, regardless of the red dot here—the top of the Massey place—the rest of the tentative line, until it gets out beyond the north boundary of the Trigg tract, I will ask you whether it runs through the Trigg tract, as it existed just before the cut-off?

A. Yes, according to all the information I ever received. I never heard of that proposition being doubted until I saw that line.

Q. Have you ever, during all your connection with the various litigations, from about 1904 down to the present time, heard it disputed, or heard any witness swear to the contrary, that just before the Centennial cut-off this Trigg tract consisted of around 1,300 acres?

A. No sir.

Q. Did you ever hear it disputed, or was it commonly reported that about 1,000 acres of that tract went into the river?

A. That was the universal opinion of all pilots and all steamboat men that I ever heard of, on that proposition. So far as the 661 Trigg tract is concerned, referring to the statement made by

Mr. Barton just now, as to the showing of Mr. Burke's survey, you will recall when he made that survey he had in his possession a description of the Trigg tract showing there were 1,000 acres included within the boundary of the Trigg tract. I think when Mr. Burke says 937 acres still remaining there, he, of course, meant 937 acres out of the 1,000 acres that was within the boundary of the Trigg tract. The rest of it was accretions made before the cut-off to the north of the Huddleston tract.

Q. He was giving it according to the original survey?

A. I presume with the muniments of title papers that he had.

By Mr. Barton:

Q. That is only a presumption on your part?

A. Yes, but necessarily true, because nobody has ever been able to

prove a connection to Mr. Trigg's will to the accretions to the north of the Huddleston tract after the Act of 1847 was passed.

Q. Did any court ever hold that 152 acres on Island 37 had all been washed away?

A. Beyond any question that has washed away.

Q. What is there to show it?

A. The river bank and the new made land is there.

Q. Where is the river bank in front of Wright's store?

A. Where is Wright's store? I have never seen Mr. Wright's store.

Q. Do you know where Mrs. Smith's house is?

A. Yes, sir.

Q. It is still standing on the same spot.

A. I very much doubt if Mrs. Smith's house is standing there.

I think the house that is taken for Mrs. Smith's is a house 662 built near there by a man by the name of Powell.

Q. It was pointed out to me last summer.

A. The person who pointed it out may feel certain of it, but I think that is a mistake. I think that is Mr. Powell's house.

Q. Well, Mr. Wright keeps a store up there; it is a new store. The house pointed out to me as Mrs. Smith's house was in the rear of his house. I asked the specific question when I was there last summer, if Mrs. Smith's house was still standing. He said it was and took me to the rear of the store and pointed out the house.

A. He may be right, but certainly the whole house is not there; enough has been taken away to keep a person from recognizing it.

By Mr. Fitzhugh:

Q. You represented Mr. Stockley and the State, I believe?

A. I never represented the state. My name is signed to the answer and cross bill—the cross bill of Tennessee—but I never really participated in the lawsuit.

Q. The record shows in the old case of Stockley vs. Cissna in Tipton County and various other cases here, that you were present and examined practically all of the witnesses.

A. I think so.

Q. Did you ever hear any witness in any of those cases take the position that the Trigg tract was not as you have stated it to be, about 1,300 acres just prior to the cut-off?

A. I never heard anybody question that; in fact, I think if you will read all the examinations I made of the witnesses you 663 will find I asked them the distance from the termination of the old levee on this Chart 18 of the government map, directly east across the Trigg tract, and they invariably gave the distance that showed that the tract of land was there.

Q. Is it not a fact that the eastern boundary of the Trigg tract, as shown by the Burke survey, is considerably east of that tentative boundary line shown on Chart 18?

A. You mean the Burke survey?

Mr. Barton: Will you look at the Burke map? Now Mr. Fitzhugh, ask him the question.

Question repeated to witness.

A. Yes, taken at the point of Centennial Island, it seems to me to be nearer Centennial Island than it is to the eastern boundary line of the Trigg tract as outlined by Mr. Burke by his red line. Of course this map is on a different scale from the others and it is a little hard to be precise. I think Mr. Burke has drawn his red lines without much care.

By Mr. Barton:

Q. It seems to me to be accurately plated.

A. It does not seem to me to accord with the other representations that I have seen.

Q. Do you doubt the accuracy of the Burke map?

A. No sir, I only say the plotting of the red line on this map seems to be different from the plotting of it that I have seen heretofore.

By Mr. Fitzhugh:

Q. You were asked by Mr. Barton if your statement that Mr. Burke, in making the survey of the Trigg tract, in which he showed 937 acres, took the calls in the deeds or muniments of title, was a presumption merely. I will ask you to state whether in connection with the decrees and deeds, based on his report to the Chancery Court of Shelby County that 1,000 acres of this tract had gone into the river, leaving two tracts aggregating 335 acres,—this caused you to believe this statement of yours is reasonably certain or not?

Q. Yes, because I have examined those deeds not only formerly, but in the last few weeks, and abstracts furnished by Mr. Green, and I found no muniments of title that it included the accretions to the north of Island 37, and I assume there are none, because no abstractor has ever furnished any, and of course Mr. Burke could have had no other muniments of title except those in existence. That 305 acres shown on his report there includes on the northern part a great deal of accretions that are outside the northern boundary of the original Huddleston tract.

Q. There is no doubt about there having been accretions of several hundred acres to the original 1,000 acre tract?

A. No, sir. As I told you before, I had a grant, that is to say a copy of a grant, recorded in Tipton County, to a tract of land—I have forgotten the number of acres—north of the Huddleston tract, and it begins very near the north east corner.

Q. A grant from the State of Tennessee?

A. To a certain party. It covered only the accretions and there is no indication in that title that that was John Trigg's.

By Mr. Barton:

Q. Mr. McSpadden, that Burke map seems to show the land found there in 1878 shaded in green. It seems to show the boundary line of the tract found there by survey made in 1868, before the cut-off, in red, the red boundary lines extending to the middle of McKenzie chute as he found it in 1878. Do you believe that McKenzie chute had caved back after the cut-off or during the cut-off, on to the Trigg tract?

A. No, sir; the proof is that Island 37 never—

Q. Not Island 37, Centennial. Did Centennial Island cave to McKenzie after or during the cut-off?

665 A. Centennial Island caved along here.

Q. In McKenzie Chute, that is the question; had it caved to McKenzie Chute; was there any caving of the bank of McKenzie Chute on Centennial Island during or after the cut-off?

A. Not that I heard of, assuming that McKenzie Chute is as shown on the Humphreys map. It is not shown definitely on this Burke map.

Q. The west line of the tract runs to the middle of McKenzie?

A. Yes. The proof is universal that there was no caving.

Q. The caving then, Mr. McSpadden, from the north—on the Burke survey made in 1876—must have been made considerably prior to the cut-off?

A. You mean accretions?

Q. I mean here. This was the shore he ran to with his survey. There was the ground he found in 1868. When he crossed here in 1878 to make the survey, he found that had receded a quarter of a mile.

A. I think you are mistaken, Mr. Barton. I think what he shows on this survey of 1877 is simply the accretions or sand bar that had been added to the land since this bank, shown by the green line, was established several years prior to the cut-off. In other words, there has never been any proof, and the land shows that there has never been any caving in McKenzie Chute, or to the north of the Huddleston tract. The land has been increasing toward the north—a uniform addition of land to the Huddleston tract in McKenzie chute. There never was, that I ever heard of, any caving on Centennial Island to McKenzie Chute, either before or after the 666 cut-off. Right now there are several hundred acres of land made before the cut-off and there has been considerable land added since the cut-off.

Q. When Mr. Burke says that is a map of a tract joined to the bank of the Mississippi River in 1868, how do you explain that line as hanging out there now in what he found to be the river in 1878, unless the bank had caved?

A. Mr. Burke's survey, made by order of the Chancery Court in 1877, was simply for the purpose of locating and getting the quantity of land there.

Q. 1868 I am speaking of.

A. This map we have before us is intended as a survey of land after the cut-off for division by the Chancery Court, and Mr. Burke, I assume, was not attempting to lay down with accuracy on that map the boundary of the land as it was in 1868.

Q. I want to say as a surveyor, and I think Mr. Fitzhugh will agree with me, and Mr. McSpadden, that that map would be worthless without that showing of the relative position in the tract; unless he locates the corners he doesn't know whether it is the Trigg tract or not. If one part of the statement is wrong the rest of it is wrong.

A. My statement is made from my knowledge of the purpose of the case of Trigg vs. Nelson, and that this survey was made in that case, as the record in that case will show, for the purpose of enabling the Chancery Court to sell all of the land that remained after 667 the cut-off of the Trigg tract. That was the only purpose.

Q. Suppose that line had shifted 100 yards. He would not know whose line that was.

A. That is true.

Q. It is absolutely worthless unless the red lines are right, the green are absolutely worthless for any purpose.

A. I believe, Mr. Barton if you will read the record in the case of Nelson vs. Trigg, it will show that you are mistaken.

Q. You can't convince me on that point.

A. I am speaking only from the record and what Mr. Burke was authorized to report. If Mr. Burke reported anything else it was gratuitous. He was not ordered to do so by the court.

By Mr. Fitzhugh:

Q. I will ask you if, since 1879, the muniments of title of any person who has owned or had an interest in these tracts or either of these tracts shown on the Burke map, had been based on the survey of those two tracts as made on that map, and if that has not been decreed to be proper basis for muniment of title?

A. Yes, that was the description followed. Mr. Stockley obtained the eastern part under it.

By Mr. Barton:

Q. Mr. McSpadden, at a former hearing you submitted this map Exhibit A to your testimony.

A. I didn't do that. I would not have offered that to you. I drew that in discussing the matter with several gentlemen 668 who were lawyers and no more competent as surveyors than I was. That map was not made for publication; it is not good enough.

Q. You show on there, from your knowledge of the territory, what you believe to be the approximate outline of the cut-off at the time it occurred?

A. Yes, sir.

Q. You show the east boundary of the cut-off about a quarter of a mile west of the southeast corner of the Huddleston grant or the Trigg tract?

A. Yes, sir.

Q. Are you sure that that is approximately correct?

A. Mr. Barton, the precise distance and precise locations were not attempted to be set forth on this rough sketch. I was only locating it from the testimony of Capt. Joplin and the statements of the various parties that I have heard discuss it, made in court, and they state that the cut-off was from north, slightly east, to south slightly west, across the Trigg place, and that the southeast corner of the Trigg tract did not go into the river until a considerable time after the cut-off. Of course this east line should have been west so as to include the 30 or 35 acres shown on Mr. Burke's map.

Q. Have you observed that Mr. Burke shows that the west end of of the 33 acre tract in 1878 was 66 chains west of the south east corner of the tract, instead of about 20, as your map shows?

A. I noticed that and that is why I appeared to have the doubt, when you asked me if — thought the limitations of the tract, as shown by the red lines, on the Burke map, were incorrect.

669 That doubt arose in my mind because of the fact that Maj.

Humphreys found the northeast corner of the Benton tract in existence in 1899-1901. Now the river had shifted to the south and east during all of those years and is still shifting that way, and of necessity if that part of the Huddleston tract was in existence immediately after the cut-off, it must have been in the extreme southeast corner, for the reason that everybody has always agreed that the east end of Centennial, which is the west side of the cut-off, has never changed or altered since the cut-off. That seems to be conclusive that the 33 acres of land must have been in the southeast corner.

Q. Have you observed from the Burke map that as a matter of fact it is not in the southeast corner?

A. Yes, you just called my attention to that.

Q. And that it is more or less almost due west?

A. You called my attention to that right now.

Q. And every appearance from that map would lead you to believe that the cut-off was further west than your map indicates by fully half a mile?

A. No, sir, I do not think that.

Q. It so scales from the two maps, half a mile.

A. This rough sketch of mine is not made to any scale in the world. I know nothing about a scale. That is why I would not offer you that map.

Mr. Van Deventer: You say that the map you have introduced is not drawn to scale?

670 A. No, sir, it is an attempt to copy, so far as the original grant line was concerned, Maj. Humphreys map. I had no idea that anybody would ever see that except the two or three gentlemen I was talking to.

Mr. Fitzhugh: I offered it as a rough sketch of the general situation for the purpose of showing the tentative line, as originally given by the members of the Commission, with reference to the Trigg tract.

A. On the west side of the 33.75 acres, on the Burke survey of what remained of the Trigg tract, on the main shore is a line that indicates the general direction of the cut-off, as I have always understood it to be, except that it should have been a little more sharply to the north.

Mr. Van Deventer: Have you ever surveyed over that country?

A. No, sir.

Q. Have you ever gone with any surveying parties during the course of their surveys?

A. No, sir, but I have been over the land frequently.

Q. Do you know where the hub is, slightly north west of Wright's store there, said to be in the northeast corner of the Trigg 100 acre tract? Can you locate it on this map Exhibit 10 to State of Tenn. vs. W. A. Cissna, right in here; do you know where that is?

A. Yes, I know where the hub is Maj. Humphreys pointed it out to me. That is an iron hub of a steamboat.

Q. Yes, some part of a steamboat, I think.

Q. That gives the correct location of the Trigg 100 acres?

A. Yes, sir.

671 Q. Can you locate Wright's store or the Smith house on that Chart 18 of the Mississippi River Commission?

A. I can't locate Wright's store because I never saw it.

Q. On Island 37, to the left of the tentative line. There are some little dots to indicate houses. Do you know which one is Wright's store?

A. I do not know which is Wright's, but Mrs. Smith's house was near the large trees, very near where Mr. Powell's house is.

Q. Can you locate the Smith house with reference to the roadway?

A. Yes. It was very near that roadway; it is right by those trees. It ought to be right in there, where Mr. Powell lived a few years after that.

Q. I wish you would look at Chart 18 with reference to the degrees of longitude 90.05 and 90.04 and the parallel longitude 35.27 and 35.26, on that roadway on what purports to be Island 37 and state if you can which one of those four black dots is Mrs. Smith's house.

A. On the chart we have got Island 37 is not plotted very definitely, but I would think it was about there.

Q. Are those two black dots together?

A. Yes, I think it is less than a quarter of a mile from that point down here up there.

Q. The two black dots are near the parallel 35 degrees 27 minutes?

A. Yes sir.

Q. And near the middle of the top of the square?

672 A. Yes, sir. I can show you better on this other map up here. It is right in there.

Q. Just put a pencil mark there.

A. I would say the old Smith house was right in there where I put the red pencil mark, on Exhibit No. 10 in the case of W. A.

Cissna vs. Tennessee, within what is marked the tract of 152½ acres, just east of the Trigg 100 acres.

By Mr. Fitzhugh:

Q. Mr. McSpadden, some inquiry was made of Mr. Green, by Mr. Van Deventer, as to Corona being a shifting point. I wish you would state what you know about Corona Landing.

A. Corona Landing as shown on Chart 18 of the Mississippi River Commission survey, is, at the present time about 200 yards, possibly a little more, further north than it was at the time the survey was made. I was on the Island when they were making the surveys—the Mississippi River Commission was making the surveys—and at that time the lane there extended north and south, it was supposed to be due north and south, and the store, which was an old building, was within 75 or 100 feet of the bank. Since that time they have moved back twice, and it is now, on account of the caving bank, as I said may be 200 yards, or approximately 200 yards further north on the same side of the lane.

By Mr. Van Deventer:

Q. What you refer to is Stockley landing and Stockley's store?
A. Yes.

Q. The boat landing is $\frac{3}{4}$ of a mile?

673 A. Yes, and sometimes five miles. There is quite a bar of land made there in the last ten or fifteen years and that is Corona Landing now. Sometimes they get freight from Molasses Point, about two miles below, and I think at the present time they go to Dean's Island by water, 8 or 10 miles above the boat landing, about 6 I believe; and in the summer time they land—the last time I was there last summer, they landed about 100 yards west of the tentative line, as marked on the map at that time.

By Mr. Fitzhugh:

Q. It is supposed to be correctly designated on Chart 18, as it existed at that time?

A. Yes.

Q. You are pretty familiar with the Mississippi River in that territory. I will ask you to state if the channel of commerce of the river changes, and did, prior to 1876, or afterwards change with the different seasons of the year, as to its width?

A. Of course I have no knowledge of the channel of the Mississippi River in 1876; but as everybody knows the channel of the Mississippi River is continuously changing. I have had a number of river cases involving plantations in Tennessee, and between Tennessee and Mississippi, and have taken depositions in the different cases, of different pilots, and I have heard them frequently say that the river had changed in making a trip and they would get stuck on ground where there was plenty of water going down the river.

674 I have in mind the testimony of Green Snow, in the case of the Soudan Plantations Co. vs. Anderson Tully Co.

By Mr. Van Deventer:

Q. As a matter of fact, boats don't follow the same channel going up and down the river?

A. No sir.

Q. On the same day?

A. No, sir, they follow the current. So far as finding the middle of anything is concerned, you, of course have to know the width before you can find the middle. If you can find any one who can tell you the middle of the channel of commerce in 1876, in any season, it is more than I ever heard of any one doing.

Q. Who prepared the map as exhibited in this record, in the original suit in which this Commission was appointed—this copy of the Suter map?

A. Is this a copy of the Suter map?

Q. That is what it purports to be.

A. Then it must be a reproduction of the map made by Maj. Suter in running down the river in 1876.

Q. I think so, according to this explanation—"the said Suter map is here exhibited"—I quote from page 4 of the transcript in the Supreme Court.

Mr. Fitzhugh: Somebody connected with the State of Arkansas.

A. The map you show me contains more than is on the Suter map. It contains a plat of the Huddleston tract; it contains red lines showing the different tracts on Island 37 and on the 675 Tennessee main shore and sections of Arkansas that were not on the original Suter map; and it also shows the channel of the Mississippi River that is not on the Suter map.

By Mr. Van Deventer:

Q. You mean this dotted line?

A. Yes.

Q. The portion in black ink is correct, is it not?

A. I suppose so. My recollection of Suter's map is that it shows a great resemblance to that.

Q. Do you know whether the Huddleston grant is correctly laid off on that map or not?

A. It does not seem to me it is, but I don't know.

Q. Can you tell whether it is wrong by comparison with the other maps. Here is the north and south line.

A. That is not far wrong. Of course I could not be accurate. The northeast part of it seems to me to be further out into the river than any of the witnesses have testified to.

Q. Compare this map, inserted in the transcript of the record between pages 4 and 5 of the original transcript of the Supreme Court,

with the grants on Exhibit 10, in the case of State vs. Cissna, composing part of the Benton tract, part of the Potter tract, the Fogelman tract and the southeast corner—a portion of the Huddleston grant—and see if the Huddleston grant is correctly laid off on this Exhibit to the original transcript.

676 A. Those red lines on the Suter map seem to indicate the same grants and tracts of land to the southeast of the Huddleston grant. Whether they are accurately drawn on the map, of course, I don't know. As I said, it seems to me that the Huddleston tract at the southeast corner is put further out in the river than I ever heard it described before.

Q. That part that is put out in the river—that boundary line corresponds with the boundary line in red on Island 37, does it not, at the southeast corner of Island 37 and is a continuation of that southeast corner of Island 37, *it is* not, as it is on this Exhibit 10?

A. I rather think that the red line shows the grant of Island 37 sticking too far to the east and too far out into the river to be a correct copy of Exhibit 10 in the case of State of Tennessee vs. Cissna.

Q. Do you remember what land was referred to on page 28 of the original record in the case of State of Arkansas vs. State of Tennessee, where it says "here follow maps marked on pages 50, 51," Do you know what maps those were?

A. No, sir.

Q. Where is the Jenkins 1,000 acres?

A. Right here south of the Huddleston tract, at the west end of it; the Jenkins tract was nearly all washed away prior to the cut-off.

677 The proof is that there was a landing on the Trigg tract at the southwest corner before the cut-off.

Mr. Van Deventer: Here is what the stipulation says, gentlemen: "Reproduction of said Suter map above mentioned is exhibited opposite page 4 of original bill filed here and appears on page 60 of the official report of said cause of State vs. The Pulp Co., supra, and is made a part hereof. There is no proof of any material changes in the river between 1874 and 1876, and this map (that is the Suter map), while not shown to be altogether correct and accurate, may be said to represent the general situation as it *is* existed in later years." Now what I would like to find out, if possible, is whether or not the red lines on the Suter map correctly show the Huddleston 2,000 acres?

A. I have never seen the map you have in front of you until you pointed it out to me just now.

By Mr. Fitzhugh: You have stated that you have gone over this locus in quo a great many times since 1876. I will ask you to state from your knowledge of the situation, which has been disclosed by your testimony, whether you consider it possible to locate with reasonable certainty the main channel of commerce of the Mississippi River as it existed before 1876?

A. No, sir; I would consider it an absolute impossibility; however, I have only been over the locus in quo since 1882. In the first

678 place, to find the middle of anything, you have got to know how wide is it, and I don't suppose the government has ever made a survey of the navigable channel of the Mississippi River at that place at any time, and certainly nobody else could afford to do it.

By Mr. Barton:

Q. Did you know that in 1874, about fifteen months before this cut-off, the United States Government had a survey made for that very purpose, conducted by Suter, to run the steamship channel of the Mississippi River, to guide pilots?

A. No, sir. I knew, of course, that Maj. Suter run down the river and rated his trips and I am familiar with the Act of Congress under which he was doing his work, but my understanding has never been that he was trying to get information to aid pilots, but that he was getting data for the improvement of the Mississippi River, and it was the beginning of the improvements which finally resulted in the establishment of the Mississippi River Commission. Maj. Suter called it a reconnaissance. I was trying to remember the date that Congress established the light house system of the Mississippi River and the act of Congress that did it, but I can't recall it. So far as I know that is the only official attempt to aid pilots in the navigation of the river and we all know the lights are changed up and down the river several times a year and no pilot relies implicitly on the lights, I think the regular routine of the light house service is to make verifications, at least four verifications, of the location of the lights a year; however, as to their regulations

I am not positive. You will notice there is nothing on 679 Suter's map that could be used as a guide post for pilots; there is nothing marked on the shores.

Q. What is that dotted channel all the way through?

A. That, I think, indicated the course that his steamboat followed going down.

Q. In making four trips, up and down the river, you think they followed the steamboat channel?

A. Very likely, especially if he had a heavy boat.

Q. Now, the location of this channel with reference to banks, you would assume to be fairly accurate with reference to the banks shown on the map, would you not?

A. Yes, in a general sense, but not making any attempt to show the channel of commerce, so-called.

Q. Col. Suter states that that was one of the purposes, to show the direction and location of the channel.

A. I think his testimony shows that he never intended his survey to be definite enough to be used in a lawsuit as evidence. I don't think he had that in mind.

By Mr. Fitzhugh:

Q. Can anybody take that map and locate the banks as shown on the Suter map at that time?

A. I think not.

Q. Or the middle of the channel?

A. I think he would be a very credulous man who would take a map of the river even two years ago, and undertake to find 680 out anything about the river by the present time.

Q. But in 1876 there was nothing on the Suter map, which was fixed by metes and bounds, from which the middle of the channel of the river as he indicated it on that map, could now be determined?

A. Not a thing in the world that I ever saw.

By Mr. Barton:

Q. Did you mean to say that is not the bank, this part of the river that we have been examining, that it was nowhere near where it was at the instance of the cut-off?

A. I think not, except at the point of Centennial Island and except as to Island 37, as it remained fixed after the cut-off.

Q. Have you been all around this channel?

A. I have been all around the channel as shown on this map that Mr. Van Deventer has in front of him, that part of the Suter map.

Q. All around Devil's Elbow?

A. Yes, sir.

Q. You think that bank has changed a great deal since the cut-off on the concave side of the bend?

A. That is to say the south side of the river, where the levee ran, remained.

Q. You think the bank of old river remained fixed, the high bank of old river, since the time of the cut-off?

A. Yes, there is no doubt about that.

Q. Why then, if the banks were as Mr. Suter found them, and his line indicating the channel of the river, was a certain 681 distance from those banks, why could not that be located from the banks?

A. There is nothing on Maj. Suter's map to show that line, or any effort to locate the boundary line, to any location on the surrounding shores that any surveyor could go to and tie it to that location. On a landscape drawing you might find that portion of the river's surface.

Q. The evidence of the pilots all differs with you on that point.

A. I don't know about that; I have never met any that did. I speak principally from testimony I have taken.

Q. I modify my statement—those I have heard testify in this suit. Admitting that the high banks of the Mississippi River have not changed since the day of the cut-off and can be identified at the present time, and admitting that those banks are practically the same as they were at the time of Suter's reconnoissance, is there any reason why measurements could not be made from those high banks, those defined banks, to the Suter line and locate with reasonable certainty where that line ran?

A. Yes, and that difficulty lies in the fact that Maj. Suter's map does not indicate any point on the land that you can tie it to.

Q. Didn't you testify a while ago that Corona Landing was definite enough to fix latitude and longitude by?

A. No, sir.

Q. Didn't you testify that it had changed so little that Mr. Green tying to it would be safe?

682 A. No, sir; I simply stated that it was precisely as it was located by the Mississippi River Commission in 1883-1884, except it had moved northward approximately 200 yards; but as to the fixing of its latitude and longitude, I have not the least idea of how you fix latitude and longitude, but the buildings are there; they are approximately 200 yards further north, on the same side of the lane, as they were when the Mississippi River Commission people were making their surveys.

Q. When Col. Suter indicates on his map numerous landings, heads of islands, mouths of chutes and bayous and other natural objects and a number of buildings, do you mean to say that when witnesses testify that they are practically in the same position, that we would be misled any more by tying to them, than we would by tying to Corona?

A. Yes. I think you would be misled if you tied to Corona Landing, and I think you would be misled if you followed Suter's map with the idea that it was definite. If you gentlemen will have surveys made showing precisely the location of the old banks as they are at this day, you will get something definite and there will be not the slightest need to attempt to hitch to Maj. Suter's surveys. The old beds are there to this day, and if you assume that Maj. Suter locates them precisely as an actual survey in the spot where the actual survey shows them to be, that will be definite; but I know of nothing that justifies you in assuming that Maj. Suter definitely points them out to be precisely where he actually

683 shows them to be; in other words, I think Maj. Suter's reputation as an officer, a gentleman and a surveyor justifies us in accepting his statement that his map was merely a reconnoissance and not an accurate survey; in other words, I believe implicitly what Maj. Suter says, that he was making no accurate survey but simply making a drawing.

Q. You don't believe that the relative position of his line and map are correct?

A. I believe his map shows relatively what he saw, but I don't believe it would be possible for him to get it there with the same accuracy that he would have located the points had he made an elaborate and careful survey as the Mississippi River Commission subsequently made; in other words the Major simply made a reconnoissance.

By Mr. Van Deventer:

Q. And drew a map of that reconnoissance, according to scale?

A. I don't think he pretends to be very accurate as to his scale.

In other words, Maj. Suter never intended that map to be the basis of any claims.

Q. Have you ever compared that map with the government bench mark set by the Mississippi River Commission?

A. Yes, but not in the last ten or fifteen years.

Q. Can you tell wherein Maj. Suter's bank lines, as he gives them, vary from the bench mark as to distance and course?

A. No, sir; I don't believe anybody can do that. I think Maj. Suter correctly described his map.

684 Q. Have you read the testimony in this case, of the pilots and captains, who said that Suter's line was substantially the line followed by pilots and captains?

A. No sir, not in this case, but I read the testimony in the case prior to this, and that right there indicates the course they followed.

Q. Did you read the testimony in this case, of the lady who is now living up there above Cottonwood Point and who pointed out the land bank mark of the bank in 1876 and told us where the boats ran in 1876, from personal observation?

A. I never heard of it until you mentioned it just now.

Mrs. Fitzhugh: Who is she?

Mr. Van Deventer: Mrs. Ben Guffin.

Q. Do you know where she lives?

A. I never heard of Mrs. Guffin. I have heard of Mr. Guffin.

Q. Do you know where Guffin's store is?

A. No, sir; I understand it is on Island 37 on what is called the Smith place.

Mr. Van Deventer: It is on the Arkansas main land.

Mr. Barton: You are speaking of Ben Guffin and Mr. Van Deventer is referring to the older Guffin place.

A. There is no doubt that Maj. Suter's map bears a strong resemblance to the situation as he perceived it, but as he said it was a mere reconnaissance an attempt to tie to anybody's corner would seem to be utterly hopeless.

685 By Mr. Barton:

Q. Do you know of any way a survey could be laid off in a current like the Mississippi River by tying to corners?

A. Unless he had an elaborate survey made for him to plot it to. In other words, the surrounding land grants would be unknown to a casual passerby on a steamboat unless somebody had located them accurately by survey for him.

Q. Would it be possible for a man to locate the thread of the channel as steamboats follow it from the land marks?

A. Beyond any question; that is easy. That is the way the pilots locate the channel now for daily use of the river.

Q. Don't you think a man on a steamboat with a steamboat reconnaissance, and having a compass, could get compass courses to those land marks?

A. Beyond any question; there is no question about that.

Q. Could he plat the channel from notes made of those courses?

A. Beyond any question.

Q. Do you know whether Col. Suter did that?

A. I only know what Col. Suter says. He says he took courses and distances, and I presume he used his instrument to get the general course and direction; but I understand the point here is how you tie to an Arkansas section corner or a Tennessee land grant corner.

Mr. Van Deventer: As I understand that is the function of this Commission.

A. I understood that to be the point of Mr. Barton's question.

Q. I referred to the bank of the river. Can you identify 686 points on the bank of the river, such as landing warehouses and measure to that distance?

A. Yes, sir. That, of course, raises the question of whether or not Col. Suter's map and the point he shows on his map, was intended to be, by him, in identically the same spot on the land an actual survey shows it to be.

And further deponent saith not.

By Mr. Fitzhugh: I would like to ask Mr. Bailey a few questions.

Mr. C. B. BAILEY testified as follows:

Q. Mr. Bailey, on Chart 18, which the Commission was kind enough to furnish me, and which is made Exhibit No. 1 to the deposition of Mr. Green, is the tentative boundary line, in red. Will you tell me when that was first surveyed and located as it exists now on that chart 18?

A. In the summer or fall of 1920.

Q. You established it then in the summer and fall of 1920 as it is now drawn on this map?

A. Yes, sir.

Q. The first evidence which was offered on behalf of the State of Tennessee, was December 1st, 1920. So this line was drawn 687 several months before any testimony on behalf of the State of Tennessee had been heard?

A. If your dates are correct.

Q. It was the intention of this Commission to establish this line before the evidence was completed?

A. Not at all.

Q. Did you make this survey?

A. No, sir.

Q. Who made it, who actually ran the lines?

A. John Wilkes was the surveyor in the field in 1920 and Mr. Newsom was the surveyor in the field in 1918.

Q. What I asked Mr. Bailey was whether you made the survey yourself.

A. No sir. The actually surveyor in the field in 1920 was John Wilkes.

Q. He never made any report that has been put in the record?

A. No, sir; he furnished the Commission with his notes.

Q. You accepted his survey?

A. We did.

Q. Did you survey or Mr. Barton survey any?

A. No sir.

Q. In accepting that survey of this gentleman, did you furnish him with any proof in this case at all?

A. No, I don't think he was given any proof. He was given his instructions.

Q. Who gave him instructions?

A. The Commission.

688 Q. Which one of the Commission?

A. I presume all of us.

Q. Was he put in possession of any of the evidence in this case?

A. Not to my knowledge.

Q. Was he instructed to establish this line according to Suter's survey?

A. Yes, as given him by the Commission.

Q. Did you point out to him on the Suter map any fixed or definite point which is established on any survey that has been made?

A. Yes.

Q. What point?

A. Old Smith house and Wright's store were given him by the Commission.

Q. Do you mean to say Suter's map establishes by metes and bounds the distance from any section line or any grant line or munitments of tile line the actual location of the Smith house?

A. Not in regard to any line.

Q. Do I understand that before the proof in the case was taken that the Commission instructed the surveyor to establish this line according to Suter's map?

A. I can't say when the proof was taken. There were a couple of meetings of the Commission when I was not present. I think they took proof at that time.

Mr. Van Deventer: Mr. Barton can explain who the surveyor was and who gave the instructions.

689 Mr. Fitzhugh: I think it is important to know.

Mr. Van Deventer: You want to find out whether this surveyor Wilkins had any instructions as to how he should run the line?

Mr. Fitzhugh: That is it; whether he had any instructions as to how he should run the line and whether in running it he was given the benefit or advantage of the proof that had been taken in this case.

Mr. Van Deventer: We gave him instructions as to how he should run his courses and run the distances, and Mr. Barton can explain that.

Mr. Barton: I was going to suggest that Mr. Bailey amend his testimony, as he overlooked some things, possibly not knowing what

you were trying to get at. I see what you want to get in. Before the Commission began the survey they gave notice to counsel for both states that they would take proof on a certain day in July (July 15th, 1920). They subpoenaed a score of witnesses and examined them all. They had submitted to them by the court all the testimony contained in the various cases with the state, as well as testimony taken by the Commission on the ground, in camp, and directions were given to the surveyor who ran them without any indication as to how he should run them.

Mr. Fitzhugh: This decision was reached by the Commission in the summer or fall of 1920?

A. Yes sir.

Mr. Van Deventer: The trend of the question, as I understand, was whether Mr. Wilkes had any indications as to how this line should be laid out. The point I made was that he had not. He was the instrument man, working the transit, or whatever it is called. He was given his courses and distances and he went out and ran those as they were given by the Commission.

Q. Who gave him the points along which this survey was made?

Mr. Barton: I have no idea. I have given no attention whatever to that.

Mr. Fitzhugh: Mrs. Narcissa Trigg, the widow of W. W. Trigg, I have recently discovered, in fact since my return, is still living in Tipton County and is now 79 years of age, and she is a woman of remarkable intelligence, so Mr. Robert W. Sanford and Mr. McSpadden tell me. I immediately called up this morning over long distance 'phone, Mr. Sanford and asked if I could take her deposition and if she was familiar with this tract before the cut-off, and to please go and visit her and call me over 'phone and tell me whether her mind was clear and distinct; and he informed me just before I came up here that she states that she lived there in 1866 on this tract of land and that she visited it one year prior to the cut-off, and according to Mr. Sanford she states there were 1,300 acres there in that tract, and that 1,000 acres went in the river at the time of the cut-off. I want to get the benefit of her testimony in the record. I notified Mr. King and I told Mr. Ewing and he said he didn't care to be here. I want to notify Mr. King and take the deposition and file it with the stenographer, on Monday, if the Commission will grant me that permission.

Mr. Barton: We have no objection, only this thing has been prolonged indefinitely.

Mr. Barton: Mr. Fitzhugh has asked Mr. Bailey about testimony taken before this line was run. He seems to think that the line was run and the proof taken afterwards. The fact is this Commission examined a number of witnesses, the testimony of whom is submitted in this record, at an open session held in Memphis, before they went into the field. They also examined witnesses on the ground. They examined numerous maps and records placed at their disposal by the decree of the court, and were unable, after about two years' search, to find a single witness, a single map, a single document, that would throw any light on this subject, that they had

not examined. After making this survey the State of Tennessee has submitted a great deal of testimony, which the Commission has duly considered. Now Mr. Fitzhugh, I think we have done everything that we could do to get the testimony. If you can get any testimony that will shift that line a mile or half a mile, this Commission is wide open to shift it. I don't know how intelligent and how fine a woman Mrs. Trigg is, but her idea of the size of her plantation before the cut-off would not hold against this map of Mr. Burke, who was on the ground.

Mr. Van Deventer: Still, we would like to have the deposition.

Meeting of Commission adjourned.

692 In the Supreme Court of the United States of America.

STATE OF ARKANSAS

vs.

STATE OF TENNESSEE.

Deposition of Mrs. Narcissa Trigg, Taken in Behalf of the State of Tennessee for Use Before the Boundary Commissioners Appointed Pursuant to Decree of the Supreme Court of the United States in This Cause, said Deposition Being Taken at the Residence of Mrs. S. C. Shelton, Sr., in Covington, Tennessee, on April 18, 1921.

Present, representing the State of Tennessee, W. F. Murrah, and the State of Arkansas, Earl King. All formalities are waived, except as to competency and relevancy, which are reserved to the hearing.

Witness being first duly sworn, deposed as follows:

Direct examination by Mr. Murrah:

Q. 1. Your name is Narcissa Trigg?

A. Yes sir.

Q. 2. Mrs. Trigg, who was your husband?

A. William Trigg, W. W. Trigg.

Q. 3. What relation was he to John Trigg?

A. A son.

Q. 4. Do you mind stating your age?

693 A. No sir, 79.

Q. 5. Mrs. Trigg, do you recall what is known as the Trigg tract near what is known as Centennial Cut-Off on Centennial Island?

A. Yes, sir. We owned the place that went through there.

Q. 6. What do you mean by "we"?

A. My husband.

Q. 7. Do you recall how he became owner of that?

A. Through will of his father, John Trigg.

Q. 8. Do you remember when he got possession of that tract?

A. During his father's lifetime, I think it was in 1865.

Q. 9. Mrs. Trigg, just state how you know about that place?

A. Well, we lived there one year.

Q. 10. What year was it?

A. '66.

Q. 11. You lived on this tract in '66?

A. Yes, sir. Lived right there.

Q. 12. When you were not living there, where did you live?

A. In Memphis, since Mr. Trigg's father left here.

Q. 13. Besides living there one year, Mrs. Trigg, what other times did you go there?

A. I went there often, and before the cut-off we used to go up there quite often in a carriage.

Q. 14. What do you mean by often?

A. Once every three or four months.

Q. 15. Would you stay very long?

694 A. No, not very long. You see Mrs. Stockley lived there a while, and I would go up there and visit her.

Q. 16. What was the size of that place, the home place?

A. It was, I reckon, 1,300 acres.

Q. 17. That was before the cut-off?

A. Yes sir.

Q. 18. And the cut-off took 1,000 acres?

A. Yes sir.

Q. 19. Can you tell us just how that happened?

A. There was a levee on the place. It broke in the high water and the river cut right through.

Q. 20. Can you give us some idea about how the river ran?

A. I don't know exactly. It went around an elbow called Devil's Elbow, and I have seen boats come around a bend and it would be an hour or two before they could get to the lower landing.

Q. 21. This place was between the upper and lower landing?

A. Yes sir.

Q. 22. Were you there visiting frequently or not up to the time of the cut-off?

A. Yes sir.

Q. 23. And you were familiar with it at that time?

A. Yes sir.

Q. 24. How long did it take that cut-off to go through there?

A. A short while I think in a day. I have forgotten exactly how long before the first boat went through, but it was a good 695 while.

Q. 25. Do you recall whether the Trigg tract of land was about as it was in 1866 at the time it went through?

A. It went through in 1876.

Q. 26. Just ten years after it?

A. Yes sir.

Q. 27. I believe you stated you went there often?

A. Yes, sir. I haven't been there in recent years. The land has changed so.

Q. 28. I believe you stated you drove from Memphis in a horse and carriage.

A. Yes sir.

Q. 29. Did you have to go across any part of the river to get on any part of the tract before the cut-off?

A. No sir. Just crossed at Wolf River on ferry and went up by land.

Q. 30. Do you remember how much of the Trigg tract was taken out by this river?

A. I think about 1,000 acres.

Q. 31. That left about something like 300 acres?

A. Yes sir.

Q. 32. Do you know whether that is still there or not?

A. Yes sir. I know it is still there. Mrs. Walker Stockley owns the 300 acres.

Q. 33. Do you know on what side of the cut-off that is now?

A. North side, I reckon, it is not on the Memphis side, is on 696 Elbow side.

Q. 34. Did you have occasion to know the place pretty well, the entire tract?

A. Pretty well. The year I lived there I used to ride with my husband around the place hunting. I would drive the ducks up for him when he would hunt. There is a big bayou there and he used to hunt ducks there right after the war and we got a great deal of game there.

Q. 35. And you kept up with it up to the time of the cut-off, and up to the time of the cut-off the 1,300 acres were there just as it was when you went there?

A. Yes sir.

Cross-examination by Mr. King:

Q. 1. Do you know whether or not all that property was known as the Stevens Slade property?

A. No sir. That was before my day.

Q. 2. Do you know where the Hiram Dean property was?

A. There is a Dean's Island over there.

Q. 3. Was there not a body of land there on Centennial Island known as the Hiram Dean tract?

A. No sir. Not while I was there. It may have been at one time.

Q. 4. Do you know where the Bateman tract was?

A. Yes sir.

Q. 5. Where was that located with reference to the Trigg land?

697 A. You mean Green Batemon?

Q. 6. G. B. Batemon.

A. That was right adjoining. Some of his relatives married Jim Walj, his niece or daughter or something, and he adjoined our place.

Q. 7. In which direction?

A. Towards Memphis.

Q. 8. Do you know whether any of that land was washed away in the cut-off or not?

A. I think it was, some.

Q. 9. Do you remember the land of the McClungs?

A. No sir. I have heard of them. You have gone way back. That was before my day.

Q. 10. Do you remember where Point Lowe was on Island?

A. Yes sir.

Q. 11. That was a big landing place there, wasn't it?

A. I think it was.

Q. 12. Did you ever go up on a boat to the Island?

A. Yes sir, time and again.

Q. 13. Where did you land?

A. I got off at Brown's place I think Bill Brown's place, and then afterwards I got off at my own landing. I remember going often. Once I went up on Lady Gay and she charged me \$35.00. I was very anxious to get home and my little nephew was sick and I had to get up. My oldest child was with me and my nurse 698 and I sent the carriage back and told them to hail the first boat in sight and it was the Lady Gay.

Q. 14. Mrs. Trigg, when you went up on the boat before the cut-off, you went around the elbow?

A. No, I got off at the lower end.

Q. 15. Down about Point Able?

A. Yes sir.

Q. 16. Were you up in the river opposite Point Lowe or opposite Cottonwood Point in Arkansas.

A. Yes sir.

Q. 17. Before the cut-off?

A. Yes sir.

Q. 18. How wide was the river then?

A. I could not say, I do not know. It was wide.

Q. 19. Very wide?

A. Yes sir.

Q. 20. And before the cut-off in '76 the main channel of the river and the only channel of the river went around by Point Lowe and Cottonwood Point in Arkansas and on up that way?

A. Yes sir.

Q. 21. And then it came down by the Batemons?

A. That is all filled in there.

Q. 22. Do you remember or not the forming of an island right opposite Centennial Island in the River before the cut-off? Just before the cut-off?

699 A. No sir. I don't remember, it may have been there

Q. 23. On which side of the river in the elbow, if you remember, was the high bank of the river, towards the Tennessee shore or towards the Arkansas shore?

A. I don't know. I used to go around there fishing. I could not say which it was.

Q. 24. The boats used the old river as it is now called, as well as the cut-off for a long time afterwards, didn't they?

A. Yes sir.

Q. 25. You say you don't know whether the Trigg lands were part of the original Slade grant or not?

A. No sir.

Q. 26. You know where the Thweat tract was?

A. That was down the Elbow, wasn't it?

Q. 27. Yes mam. Do you know whether or not Point Lowe was on the Thweat lands or not?

A. I think may be it was.

Q. 28. Do you know whether or not the Trigg land joins the Thweat lands or not?

A. I think it does.

Q. 29. Do you know whether or not the cut-off also cut away a good part of the Thweat lands?

A. I don't think the Centennial did, but the river caved off there a good deal. Yes sir, I think it did.

Q. 30. Do you remember where the Harrisons lived on that island?

700 A. Yes sir.

Q. 31. They occupied some of the land that were formerly the Trigg lands, did they not?

A. Well they bought from Walker Stockley some land I think.

Q. 32. Was some of that the original Trigg land?

A. Yes sir.

Q. 33. Where were you, Mrs. Trigg, when the cut-off was had?

A. In Memphis.

Q. 34. How long a journey was it from Memphis?

A. It was just two or three hours, twenty-five miles I think it was through by land. I used to know all those places along there and the Brinkley place. He sold it and Mrs. Stockley bought it.

Q. 35. None of the Trigg lands were on Dean's Island?

A. No.

Q. 36. And they were in Tipton County, Tennessee?

A. Yes sir.

Q. 37. Mrs. Trigg, how far was it to the river before the cut-off from the Trigg land?

A. The Trigg land on one side—the north side. East side was right there on the river but on the southwest side it was about Batemon and J. H. Massey.

Q. 38. You don't know how far it was before there was any cut-off from the Trigg land west to the river?

A. About a mile.

Q. 39. And the Green Batemon land lay in between them?

701 A. Yes sir.

Q. 40. Do you remember Hiram Dean's land?

A. No sir.

Q. 41. I was speaking of a man named Hiram Dean there close to the Trigg lands?

A. No sir, I do not remember. That was before my day.

Q. 42. Has there been a restoration by the water of any of the Trigg land? Have any of them been restored or do you know?

A. There has been an accretion over at a place called Tow Head, I think.

Q. 43. How is that related with reference to Dean's Island?

A. I don't know whether that is on the old river or not. I believe it was.

Q. 44. Dean's Island is up beyond the Trigg lands?

A. Yes sir.

Q. 45. The Trigg lands do not touch Dean's Island?

A. No sir.

Q. 46. And never did?

A. No sir.

Q. 47. Since you have known it?

A. No sir.

And further this deponent sayeth not.

By consent the signature of the witness is expressly waived.

(Filed on Behalf of State of Tennessee.)

Deed from Simon Huddleston to John Trigg.

Deed to 1,500 Acres. Registered Dec. 16, 1845.

This indenture made this 13th day of March, one thousand eight hundred and thirty-seven, by and between Simon Huddleston, of the County of Overton and State of Tennessee, on one part, and John Trigg, of the County of Madison and state aforesaid, of the other part

Witnesseth: That the said Simon Huddleston for and in consideration of the sum of seven hundred dollars, to him in hand paid, the receipt whereof is hereby acknowledged, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said John Trigg, his heirs and assigns forever, a certain tract or parcel of land, situated, lying and being in the County of Tipton and state aforesaid, on the Mississippi River, in the 11th District, Range 9, Sections 5 and 6, and bounded as follows, to-wit: Beginning at a willow marked S. S. Stephen Slade's northeast corner, on the bank of the Mississippi, running thence south with his line one hundred and fourteen chains to a mulberry marked S. H.; thence east 200 chains to a mulberry marked S. H.; thence north 78 chains to a white oak marked S. H., on the bank of the Mississippi River; thence down with the meanders of said river to the beginning.

Granted to Simon Huddleston by Grant No. 21,206, excluding a part deeded to the locator by said Huddleston of five hundred acres, leaving a balance of fifteen hundred acres, with all and singular

703 the hereditaments and appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, claim and demand whatever of time, the said Simon Huddleston of, in and to the said lands and premises and every part and parcel thereof, to have and to hold the said land and premises above mentioned and every part and parcel thereof with the appurtenances unto the said John Trigg, his heirs and assigns to the only proper use and behoof of the said John, his heirs and assigns forever, and said Simon for

himself and heirs, the said lands and premises and every part and parcel thereof, against himself and his heirs and all and every other person whatever, will warrant and forever defend to the said John, his heirs and assigns. In witness whereof the said Simon Huddleston has hereunto set this hand and seal the date above written. Simon Huddleston. (Seal.) Signed, sealed and delivered in presence of witnesses: Willis Huddleston. Robert Martin.

STATE OF TENNESSEE,
Overton County:

Personally appeared before me, William Gore, Clerk of the County Court of said county, Willis Huddleston and Robert Martin, the sub-
scribing witnesses to a deed of conveyance from Simon Huddleston
704 to John Trigg, for 1,500 acres of land in the county of Tipton
in said state, held by grant No. 21,206 from said state, who
being duly sworn, upon their oaths say they are acquainted
with the said Huddleston, the conveyor, and that he signed the said
deed in their presence, and also acknowledged the signing of the
same to be his act and deed for the purposes therein contained, on the
day and same bears date.

Witness my hand at office this 13th day of March, 1837. William
Gore, Clerk.

The foregoing is a perfect transcript of the office record made on
the proving of the foregoing subjoined deed of conveyance. Attest:
William Gore, Clerk.

Rec'd the state tax on this deed, \$2.25. R. H. Munford, Clerk of
Tipton County Court.

STATE OF TENNESSEE,
Tipton County:

Register's Office 16" December, 1845.

I, James Overall, Register of said county, hereby certify that the
within and foregoing instrument was filed with me on the 27th
November, 1845, at 10 o'clock a. m., and noted in entry Book A,
page 22, for registration, and that the same, together with the cer-
tificates, are this day duly recorded in my office in Book G, pages
221 and 222. James Overall, Reg'r.

705 Copied from the entry of the original deed, recorded in
Book G, pages 221, 222 and 223, in the office of the Register
of Tipton County, Tennessee. Sue E. Murphy. Oct. 19th, 1901.

STATE OF TENNESSEE,
Tipton County:

Register's Office, Dec. 2, 1901.

I, I. R. Calhoun, Register of said county, do hereby certify that the
above and foregoing is true and correct copy of this instrument now

of record in my office, in Deed Book G, page 321, et seq. I. R. Calhoun, Register.

(Copied from Record, Cissna vs. Tenn., p. 116-118.)

EXHIBIT NO. 2.

(Filed by State of Tennessee.)

Will of John Trigg, Deceased.

Filed and Probated July 3d, 1865.

I, John Trigg, of the county of Shelby and state of Tennessee, being of weak body, but of sound mind and disposing memory, do this tenth day *day* of July, in the year of our Lord one thousand eight hundred and sixty-one, make this, my last will and testament, hereby revoking all former wills and part of wills or codicils made by

706 me, and declaring the same null and void.

Item 1st. I give and bequeath to my son, Thomas B. Trigg, my plantation in the county of Lafayette and state of Arkansas, the tract of land containing four thousand acres more or less, fourteen hundred of the same is cleared and in cultivation, also eighty acres of land in the same county and state, on which there is a valuable grist mill; also a tract of land in the same county and state, containing one hundred and twenty acres, more or less, and about one mile and a half from the grist mill tract. I also give and bequeath to my son, Thomas B. Trigg a tract of land in the same county and state called the "Hill Place," and containing five hundred and sixty acres, more or less, and about seven miles west of the four thousand acre tract.

Item 2d. I also give and bequeath to my son, Thomas B. Trigg, all the negroes now on said four thousand acre tract and on the "Hill Place," or which may be on them at the time of my death, with the exception of two other negroes otherwise disposed of by me, the number now supposed to be one hundred and twenty or thirty.

Item 3d. I give and bequeath to my daughter, Lucy Jane Stockley, a tract of land lying in Tipton County, Tennessee, on the Mississippi River, containing five hundred acres, more or less, the same tract she now has possession of, on which she has the fifteen negroes heretofore given to her by me.

Item 4th. I also give to my daughter, Lucy Jane Stockley, thirty-five acres of land in the County of Shelby and State of Tennessee, lying below Fort Pickering, and which is the same lot of land on which she now resides, and lying east of Horn Lake Road, also thirty-five acres more or less on the east on which her residence is, and being the balance of the land between her residence tract and the Mississippi and Tennessee Railroad.

Item 5th. I also give to my daughter, Lucy Jane Stockley, two brick tenements on Front Row in the City of Memphis, commencing twenty feet from the corner of Adams Street and Front Row, and

running back sixty-eight feet, all the foregoing property given to my daughter, Lucy Jane Stockley, I give to her and her heirs forever, with- being subject to the control or disposition, in any manner of her husband, Mr. Charles A. Stockley.

(Error see original will. One item left out.)

Item 7th. I give to my son-in-law, Henry C. Walker, and to my daughter, Lizzie, his wife, five thousand acres of land in Crittenden County, Arkansas, more or less, lying north and south of the Memphis and Little Rock Railroad, commencing somewhere about seventeen miles from the Mississippi River on both sides of said railroad. I also bequeath to them all my interest in the lots and land in and around the -own of Madison, St. Francis County, Arkansas, also one-twelfth, or whatever my interest is, in a tract of land lying a few miles from the town of Madison, containing three hundred acres, more or less. If the said land has been sold by the company they are to have my interest in the amount of the sale.

708 Item 8th. I also give and bequeath to my son-in-law, Henry C. Walker, and to my daughter, Lizzie, his wife, thirty acres of land more or less lying in the County of Shelby and State of Tennessee and adjoining on the west the lot of thirty-five acres, heretofore given to my said son-in-law, Henry C. Walker, my gift to my son-in-law, H. C. Walker, and my daughter, Lizzie, is intended to embrace all the land from the plank fence, which is the eastern boundary of the Walnut Hill tract given to my son-in-law, William W. Trigg, to the Hernando Plank Road, and to the junction of the lot of seven acres now owned by Henry C. Walker.

Item 9th. I also give and bequeath to Henry C. Walker and to my daughter, Lizzie, his wife, two brick houses or tenements in the City of Memphis fronting fifty feet, on Front Row and running back one hundred and forty-eight feet, and lying north of the two houses or tenements given to my daughter Lucy Jane Stockley.

Item 10th. I also give and bequeath to Henry C. Walker and to my daughter, Lizzie, his wife, all my stock in the Memphis and Ohio Railroad Company, in the Tennessee and Mississippi Railroad Company and in the Mississippi and Little Rock Railroad Company.

Item 11th. I give and bequeath to my son, James B. Trigg, one hundred and twenty acres of land, more or less, in Shelby County, Tennessee, and lying between the Horn Lake Road and the Mississippi River, and west of the land given to Lucy Jane Stockley.

Item 12th. I also give and bequeath to my son, James B. Trigg, eight hundred acres of land, more or less, lying in Tipton 709 County, Tennessee, in Old River, being the same tract of land on which my son, Thomas B. Trigg, formerly resided.

Item 13th. I also give and bequeath to my son, James B. Trigg, five hundred acres of land, more or less, in Tipton County, Tennessee, and lying on Island 37, on Mississippi River, and being the same place on which my son, John A. formerly resided.

Item 14th. I also give and bequeath to my son, James B. Trigg, my interest, being three-fourths of three hundred and twenty acres of land, more or less, lying in Burree County, Texas, the other